

No. 11658

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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GLENS FALLS INDEMNITY COMPANY, a  
Corporation,

Appellant,

vs.

BASICH BROTHERS CONSTRUCTION COM-  
PANY, a Corporation,

Appellee.

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Transcript of Record

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In Two Volumes

Volume II

Pages 433 to 881

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FILED

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PAUL P. O'BRIEN,  
CLERK

Upon Appeal from the District Court of the United States  
for the Southern District of California  
Central Division

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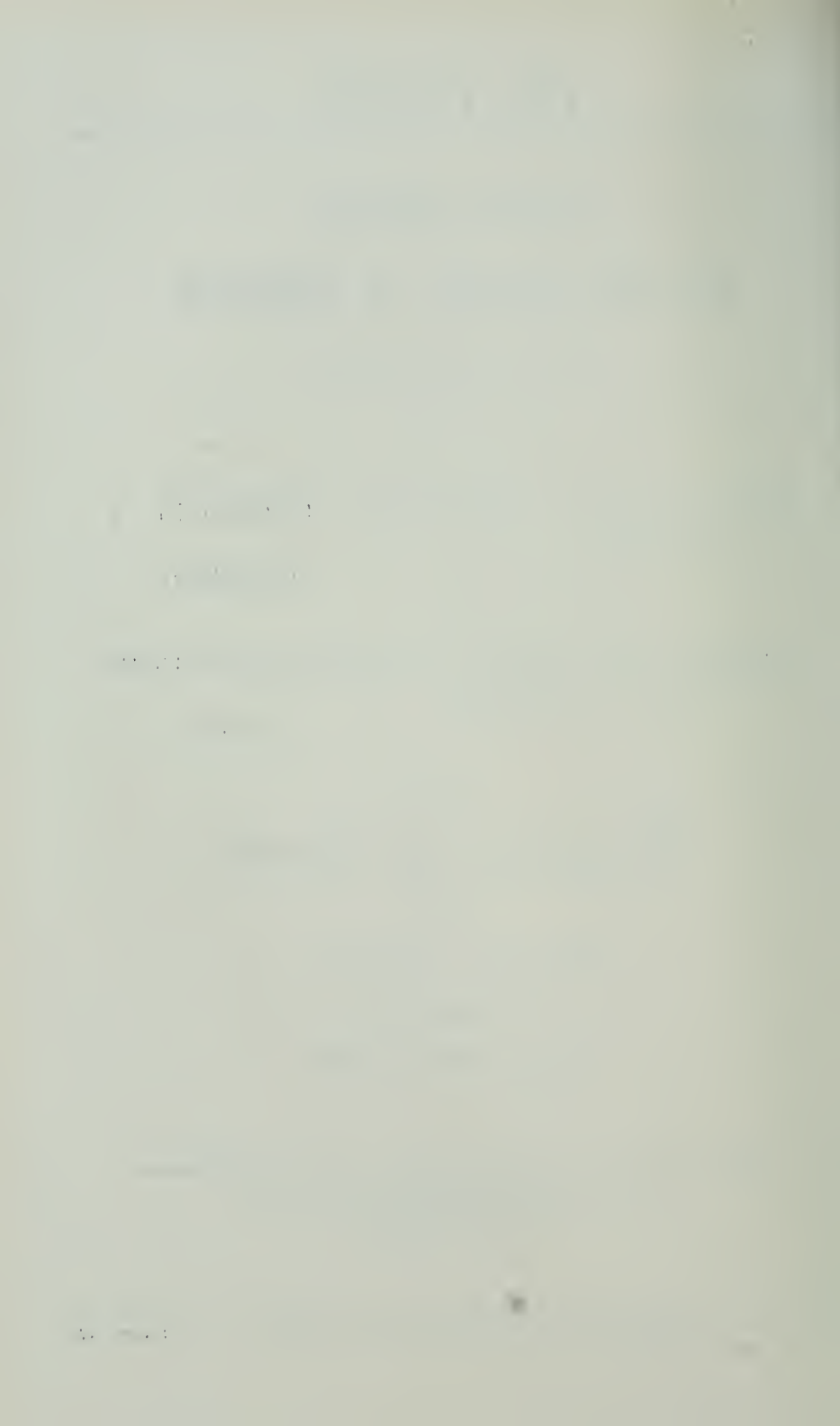
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Upon Appeal from the District Court of the United States  
for the Southern District of California  
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(Testimony of Nickola L. Basich.)

Q. On the P.D.O.C. crusher, which you mentioned this morning, did you have a contract with P.D.O.C. to install that crusher at the pit for the sum of \$2,500.00?

A. Yes; that's the deal that was made.

Q. When did you make that contract with P.D.O.C.?

A. Mr. Kovich made it the first part of June.

Q. Mr. Kovick made the deal? A. Yes.

Q. He made it the first of June?

Mr. Monteleone: He said the first part of June.

A. The first part of June.

Q. (By Mr. McCall): Did he at the same time make a contract to pay them so much per yard?

A. Yes.

Q. And before this contract was made did you take the question up with Duque & Frazzini?

A. No, with the exception that we wrote a letter to Duque & Frazzini and the bonding company, both.

Q. And did they write you a letter protesting?

A. Not at that time.

Q. So, at the time that you made the contract with P.D.O.C. for the crusher, about June 1st, Duque & Frazzini, so far as you knew, knew nothing about your putting it in?

A. We wrote them in the letter that we were going to move the plant in.

Mr. McCall: That is all.

Mr. Monteleone: I have Mr. Homer Thompson, the auditor, who actually kept the books at the

field office at Tucson, which would be merely a repetition of what Mr. Popovich said. I think in view of the statement of Mr. McCall, I will rest the case.

The Court: All right. Is there any additional testimony you desire to produce?

Mr. McCall: May it please the court, I would like to have just a few moments to consult with my associate as to whether I will introduce any.

The Court: All right.

(Short recess.)

Mr. McCall: I would like to call Mr. Vernon, please.

#### LAWRENCE H. VERNON

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

A. Lawrence H. Vernon.

#### Direct Examination

By Mr. McCall:

Q. What is your business?

Mr. Monteleone: I will stipulate that Mr. Vernon is an accountant, and he is the man who checked the records of Basich Brothers. He is a qualified accountant.

Q. (By Mr. McCall): Mr. Vernon, at my request did you check over the records out at the

(Testimony of Lawrence H. Vernon.)

office of Basich Brothers, the plaintiff here, in the light of the Bill of Particulars in court?

A. Yes, sir, Mr. McCall; I arrived there August 12, 1946.

Q. In your examination of those records, Mr. Vernon, did you check over all the payroll checks in connection with the subcontract with Duque & Frazzini?

A. Yes, sir, I have checked many of those. I couldn't say I checked all of them.

Q. And those checks, in payment of labor and material and supplies, were on whose check blanks?

A. On the check blanks of Basich Brothers Construction Company. The payroll checks were worded: Payroll Account on Job No. 19. The general account checks read: General Account—which paid for equipment and other items, besides payroll.

Q. Did you check other payroll checks made by Basich Brothers in connection with other work on this job, aside from the subcontract work?

A. Yes, sir, I did.

Q. What was the difference between those checks?

A. There was no difference whatever that I can see.

Q. Did you find any checks containing the name of Duque & Frazzini?

A. No, sir.

Q. Was there any notation on the checks that you saw that contained a statement as to what job it was on?

A. Only on the payroll it said: On Job No. 19,

(Testimony of Lawrence H. Vernon.)

which was the number of Basich Brothers in this Tucson job.

Q. Describe the checks for equipment rental.

A. They were on account of Basich Brothers Construction Company, general account. Both accounts were drawn on the Farmers & Merchants National of Los Angeles.

Q. Was there any notation on them showing Duque & Frazzini subcontractors?

A. None that I could find.

Q. Did you check copies of the withholding tax returns?      A. Yes, sir.

Q. Describe those copies, as to who was employer and employee, to the court.

A. The copy read that Basich Brothers Construction Company was the employer, and it stated in the form, on the printed form, that the following names were employees of Basich Brothers Construction Company.

Q. Did you check the time cards which were mentioned here yesterday?      A. Yes, sir.

Q. How many time cards, if you know, did you find?

A. When I first arrived on the job, on August 12, there were about 25 time cards handed to me as representing the employees of Duque & Frazzini, on Schedule No. I. Those time cards were on a form, printed Basich Brothers at the top.

Q. Did you ask about any other time cards?

A. Yes, sir, I did.

Q. Who did you ask?



(Testimony of Lawrence H. Vernon.)

A. I asked Mr. Homer Thompson, and I believe Mr. Popovich was present at that time also.

Q. What did they tell you about any other time cards?

A. They took me down to the basement of their building, and showed me about five or six large boxes of what they said were time cards in those boxes. They told me, before I started to examine them, that they were very badly disarranged as to chronological date, and as to employees, and all that sort of thing; that it would be a very long task to sort them out.

Q. Did you check the reports of Basich Brothers to the State of Arizona on employment insurance?

A. Yes, for the first and second quarters of 1945.

Q. Were they reported as employees of Duque & Frazzini, or Basich Brothers?

A. They were reported only as employees of Basich Brothers Construction Company.

Q. Did you check the Social Security returns to the Federal Government?

A. Yes, sir, for the first and second quarters of 1945.

Q. Were they reported as employees of Basich Brothers, or someone else?

A. They were reported as employees of Basich Brothers Construction Company.

Q. Did you check the reports regarding withholding tax returns?

A. Yes, sir.

(Testimony of Lawrence H. Vernon.)

Q. Who signed as employer and employee there?

A. The employer was Basich Brothers Construction Company.

Q. Did you check vouchers showing payments for various equipments mentioned in the Bill of Particulars?

A. I checked about 75 per cent of all of them.

Q. Were those vouchers addressed and made out to Duque & Frazzini, or to someone else?

A. They were all made out to Basich Brothers Construction Company.

Mr. McCall: That is all.

#### Cross-Examination

By Mr. Monteleone:

Q. These vouchers you spoke of were vouchers from third parties sent to Basich Brothers, is that correct?

A. Yes, vendors' invoices.

Q. Then Basich Brothers sent vouchers to Duque & Frazzini, did they not, for the equipment mentioned in the voucher of the third parties?

A. I saw no such vouchers.

Q. You did not examine any?

A. No, sir.

Q. How many days or weeks did you remain at the job?

A. I was out to the office of Basich Brothers four weeks, from August 12th. Then I returned on two different days after that.

(Testimony of Lawrence H. Vernon.)

Q. They did not prevent you from seeing any of the records, did they?

A. No, sir; they treated me with every courtesy.

Q. They were placed at your disposal?

A. All I asked for, with the exception of the time cards. They showed me everything else I requested.

Q. In all of your examination you did not find any checks of Basich Brothers made payable directly to Duque & Frazzini, did you?

A. No, sir, I did not.

Q. All those checks that you noticed were made payable direct to the employee, isn't that true? They were named as the payees?

A. The payroll checks on payroll account were made to the employees.

Mr. Monteleone: That is all.

Mr. McCall: Nothing further. Defendant rests.

The Court: Let the record show that all the evidence has been closed. and that all the evidence relates to all the issues in the case, not only to the issue of liability, to which it was limited at the prior submission.

(Whereupon, an adjournment was taken until 2:00 o'clock p.m. for the purpose of argument.)

## CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 3rd day of April, A.D. 1947.

HENRY A. DEWING,  
Official Reporter.

[Endorsed]: Filed May 16, 1947.

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[Title of District Court and Cause.]

Hon. Leon R. Yankwich, Judge Presiding.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

(Partial)

February 5, 1947

Mr. McCall: You will note Mr. Woolums stated in his testimony that he was not there; Mr. Basich stated in his deposition that Mr. Woolums was there. At any rate they all agree, Frazzini, Mr. Basich, the plaintiff, and Mr. Koviek, that they did countermand the orders, and continued with the work. Mr. Basich testified this morning that he

entered into a contract with P.D.O.C. to produce equipment to move another shovel on there.

The Court: I was not very much impressed, when they adopted on method of carrying laborers, and their bookkeeping shows definitely a severance, how that could be called a departure from the contract, even under the strict rules of court, because ultimately you are interested just as much as they are that the laborers be paid. If they agreed to carry them on their payroll, but abide by what the other people told them as to how much work was performed, and as the evidence shows clearly, without interference, without question, I don't see how you can be hurt. Certainly, if the Circuit Court through that were sufficient, they would have held they were not the subcontractors.

In the opinion they rendered the Circuit Court said that Basich Brothers paid all the payrolls of Duque & Frazzini; then they brushed aside any question about it by saying that did not prevent them from being subcontractors, it being contended that, in view of the fact that the laborers were paid by them they were only material men. The court said no.

I am not very much impressed by that thought, and I don't think in any of the cases you cite there is a case where the mere fact that a man is carried on the payroll changes the relationship. It happened that it was to the advantage of everybody. It was being done.

Furthermore, the very minute your man went down there he saw the books; and I don't care

whether he says he did not see them, or not. They were there. Everybody examined the books; we know they were there, because he is charged with knowledge. From the very beginning these men were carried, and he never having brought it to your knowledge, that is your loss, assuming it would have made a change.

Mr. McCall: That is one thing that changed the circumstances.

The Court: That is a very important thing. As I go back and note that, I was impressed. Recently, in an opinion I wrote under the Miller Act, I am not sure just how the question arose: Whether the subcontractor was entitled to notice, but the contractor had been given notice so as to allow him to come in under the Miller Act. The bonding company maintained that the company had no notice, and there was no liability. I found, however, that as a precaution they did exactly what was done here, except that they sent one bill made out to both parties—to the prime contractor and to the subcontractor, but that the subcontractor O.K.'d the bill and sent a copy to the prime contractor, who paid it. This also was government work, at the aviation field at Murock Lake.

On the basis of that I said the contractor and surety were not in a position to come into court and say: We did not have the formal notice. I held the circumstances in the case were sufficient to dispense with any formal notice under the Miller Act, so I gave them the benefit of it.

That is the way all these acts are interpreted, whether you follow the strict rule or the liberal rule. They hold, as I tried to demonstrate the last time, and in that respect said, that even the cases holding to the strictissimi juris idea say that there must be a substantial change, a change which, from its nature, is likely to harm the other side.

How could they be harmed? Because Basich Brothers paid each month on demand. Suppose they had sent a check to them. Suppose they advanced them money. You could not have been harmed by that. As it is, they may show the work actually incurred and paid by individual checks upon the demand of these people. There is nothing in the contract which says they can't advance money, so long as they do not exceed the maximum of the term payments as they become due under the contract.

Mr. McCall: But in the case your Honor just referred to, I notice that is a case in Arizona. They were in the District Court of Arizona.

The Court: It doesn't decide this point, but it is interesting to note that here is a court which considers it absolutely unimportant. Why should I consider it important in determining a different kind of breach which is alleged.

Mr. McCall: In that case the defendant Basich Brothers had taken the position in their pleadings and all of their records that there was no subcontract. They took the position that Duque & Frazzini were not subcontractors, but they were

merely furnishers of material. That is what the court held before.

The Court: But the decision showed that under the law their contention was incorrect. The court had the same facts there as to the relationship—mixed law and facts. The mere facts that they assumed an opposite position in one case does not mean anything. No litigant is required to assume a consistent position. They can assume any position towards you, and if it benefits the plaintiff they can assume an inconsistent position with someone else. All the consistency that is required is a consistency in their position which is arising out of your particular contract. You have the same right in your defense. You don't have to be consistent in your defense.

Mr. McCall: That, of course, comes up from Arizona, where they do not have the rule of strictissimi juris. Also, your Honor, as I have just mentioned, that was a case where laborers and material men had sued the general contractor and his surety under the Miller Act.

The Court: They defended it on the ground that they were not material men, because under this arrangement the court said: No, you were subcontractors under the law. And allowed them the benefit of the Act against Basich Brothers.

Mr. McCall: That's right.

The Court: I don't say they decided the point. I merely say it is very significant that the court did not find the mere fact that the very labor you sued was sued under the arrangement which allowed



Basich Brothers to carry the payroll in their own name, and pay all the persons who worked for Duque & Frazzini. Don't you consider that as significant enough to alter the relationship of contractor and subcontractor. That is all the analogy I draw from the case.

Mr. McCall: I happened to be in that case over there, on a third party complaint.

The next question, your Honor, is the question of premature payments. Of course, payments were made from the very beginning, and there was never any amount, according to plaintiff's own testimony, due Duque & Frazzini, the subcontractor. On the further question of control——

The Court: That impressed me before, but that point does not impress me very much now, for the same reason that I gave before, and that is there is nothing to prevent them from advancing money so long as, at the time the first payment is due, they have not exceeded in advancing the amount that would have become due.

A surety is not injured if, for instance—let us take an ordinary house. Most of us who have practiced law are familiar with that, although, as a Judge of the Superior Court, and as Judge of this court, I have handled all sorts of cases relating to construction which required me to even pass on the value of material, and so forth. Supposing you have the usual provision for the payment of say 15 per cent of the contract price when the rough plumbing is completed, and suppose just before the rough plumbing is completed some laborers are

unpaid, and the contractor says: All right, I will pay the laborers, and deduct it from the amount; unless at that time he advanced more than would be due, when the rough plumbing was completed, you can't possibly be hurt. It would not be a substantial variation of your contract. That is why I said a full detail of the transaction, the method of payment, would clarify all these questions which, upon the cold record, seemed so vital one way or the other.

Suppose it is admitted that it does appear in the record that they advanced several thousand dollars the first week, that doesn't harm you in any way, and would not be a substantial breach of your contract.

Mr. McCall: At the time the first payment became due they had advanced more money than the first payment. That is shown by Paragraph XVI of the plaintiff's complaint, in which it is alleged he has paid out so many thousands of dollars more than they have earned.

The Court: Over the entire period.

Mr. McCall: Up until that time, yes, and there was nothing due until after the 31st of March. But in this case, what I was mentioning about control, I did not have in mind the payments. I was going to mention Mr. Kovick, in his deposition, where he was asked what he was doing in this pit along the first 10 or 12 days in February. He said he was there superintending the necessary production of material, or words to that effect. Then he comes

along later, and he said other acts, which shows he was in complete charge.

The Court: I don't think there was any control at all. I think that testimony must be taken in conjunction with Frazzini's, which shows he ran the job, and also the testimony of Mr. Basich. It is absolutely undisputed that no one was interfered with.

I will decide right now that the evidence in the record shows that Basich Brothers at no time had control over the work, and the manner of its doing. The only relationship they had with the workmen was they paid them their wages upon the payrolls presented to them and signed by Duque & Frazzini, or their agents.

Mr. McCall: Can I mention then the next question I have in mind from my notes?

The Court: Go ahead. I am not interrupting. I may change my mind in the next five minutes. I am telling you as to these particular things, and the evidence which has been introduced now is quite revealing to dispel any substance to any claim.

I will say, if Mr. Justice (?) got hold of this case on that point, he certainly would clarify the rule, and hold that that does not mean any deviation; that it means a substantial deviation, which is the law of Arizona, and the law of any other country. It is not the law of California, as I read it, that any deviation, regardless of whether it results in harm to you, is a deviation of the contract.

The evidence would have to show, as I said before, that you actually started under one setup, and

then proceeded under another. The evidence does not show that. In fact, the evidence shows to the contrary, and the payment of the wages, and the payment of the insurance, carrying the liability in their name, is shown to have been really a favor to the man, because otherwise he would have been required, under the Employers' Liability Law of California, to make a deposit of \$10,000.00, which he was not in a position to do.

So we must not go to the absurd length of holding that the rule in California would warrant a nullification of the contract of indemnity upon insignificant changes. They must be of substance, because the law does not deal with insignificant things. What the law is interested in is that a party to a contract should not conduct himself in a way that by changing the very terms, jeopard the interest of the other side by insignificant changes made in good faith to carry out the contract.

Mr. McCall: I would like to call the court's attention to a case which counsel has mentioned, and we have also mentioned, *Union Indemnity Co. vs. Lang*, 71 Fed. 2d 901. In that case the court held that the notice was not sufficient, and it was not as long in being served as the notice we have here.

The Court: The one thing that impressed me in the case is that exchange of letters, which shows that somebody was either doing his best to keep him going, or it shows he did not care to assume any other obligations until he got good and ready, because in all the answers written to the various notices there is not a specific statement which stated

that they wanted to do something about it. All they said was: We will see about it. See what we can do. Even after they assumed responsibility for the work, I said in a prior statement, I think they might have waited, because at that time we were not discussing the question finally. I was just expressing certain things which were running through my mind—whether in this case the very attitude of both parties, each trying his best to adjust the matter, did not give the plaintiff in this case a sense of security, so as to justify action in the belief that everybody would cooperate when the crisis actually came.

We have an illustration in fire insurance, where a time limit is set for claims, and where the insured, who does not know the home company, but knows only his local agent, goes to him and the agent either tells him he will take care of it, or says, you don't need to do it; I will take it up. The company cannot avoid liability where it was the action of its agent which induced him into a sense of false security, and which compelled him to desist from making the claims.

I had a very interesting case in the Superior Court, where a man actually went to a local agent, made his proofs of loss, and left them there. The agent pigeon-holed them, and they never left actually, but the insurance company resisted liability on the ground that the local agent was doing a favor to the insured. That he was not under obligation to forward it. But I held that despite the fact that the insurance policy said that notice

shall not be effective until received, when he deposited it there, they are not in a position to say they shall avoid liability, when the insured said: I went to the agent, and he said, all right, I will take care of it.

I want you to point out to me where there is, in the letters exchanged with your company, a direct statement, if your man has fallen down on the job, that you are willing to give them so many days, and after a certain time you will walk right in and see that it is completed? Where is it shown that you ever made that notice, which is given you under the statute? You wrote some of the letters, but not all of them.

Mr. McCall: Yes.

The Court: It seemed to me there was so much dickering, one with the other, that Basich Brothers were confronted with an emergency, which would entail great losses of time to themselves and to your client.

Mr. McCall: To the principal.

The Court: Yes, to the company, the principal. Let us take them by name. "The words "obligor," "obligee," are at times confusing, when you are talking about an individual.

In assuming control, what was there to prevent them, in view of the absence of some demand, from going on? You could always have said you were coming in. Instead of that, your company, as soon as they learned, said afterward: You have already started. You did not give us a chance. If they had stopped, and allowed damages to accumulate, the

loss would have been greater to Duque & Frazzini. So there is a duty to minimize the loss. A man cannot sit idly by, because another has failed in the obligation.

I had a case recently where I applied the same principle, where a veteran was seeking reinstatement. The government attorney claimed that he must be re-employed, whether he has worked or not, or has made any money. That he was entitled to the salary he would have earned, despite the fact that they asked him to come back. In that case I held that they could not prevail in their contention.

Mr. McCall: I understood the court to say in effect that there was no waiver on the part of the surety, because they did not go in there and insist on taking over.

The Court: I was not talking definitely. I was going by the record. I found in these depositions another situation. Here is what I said:

“The record is not very clear”—everything I said was prefaced by the proposition that it was not very clear. I made the specific point several times that I was not deciding any point except one point of law, on which I said my mind was made up. I was merely giving you reasons why the cases should be reopened.

This is what I said, on page 30:

“The record is not very clear as to what actually took place on June 8th. Duque & Frazzini have not testified. The testimony is merely that they were notified that he was quitting the job, and they went on and com-

pleted the work, but not until a few days afterwards did they notify them, and even then it was not a request to do anything, but merely a general statement, because in fact, if you were completing the contract on the basis of that, it is alleged that you chose to complete the contract without giving them the first opportunity; that you were under obligations to the government, but there was nothing in the contract you have which said that you had the right to complete it, and the doctrine of minimizing loss does not mean completing the work. There is no case that warrants that. The doctrine of minimizing loss occurs mostly in torts. When applied in a contract it means merely that a man should protect the property. I have not found any cases that you have cited that hold to the extent that minimizing damage means that you can walk right in and conclude the contract."

We have now the Frazzini deposition, and he explains what actually took place, and we have additional testimony. So that what I said before I said with a warning, which I usually give, and that was that the case was not completed, and therefore every point I was raising was a tentative point. I am not so sure on the record now, in the light of the true relationship. That is why I came to the conclusion which was that this manner of payment, this arrangement, was so fundamental that ultimately it affected the view of the court upon every one of the points, because behind it all laid this



very situation, that is, the arrangement whereby financial responsibilities were taken over by others.

Mr. McCall: Touching on the point your Honor made a few minutes ago, as to why the surety did not do something, I indicated that it was ready to take over, but from the very nature of the surety contract it has no position on the job, and could not take any action, either with the principal or the obligee. As long as the principal is on the job, and knew when the obligee under the terms of his contract has defaulted, and put the principal off the job, then he has to call on the surety, but not before that.

The Court: When they took over, they wrote the letter, and said they had abandoned the job. There was nothing to prevent you, after that, from saying: We are taking over. We will not be responsible. Then you have notice.

Mr. McCall: We did not have the notice required by the surety bond itself.

The Court: When they tell you a man has abandoned the contract, that is all the notice you would want. They don't ask you whether you will take the job. It is up to you to say, under the circumstances. Wasn't it your duty to say: Gentlemen, you have notified us. We will not be responsible. We are ready to go on. There is nothing in this letter even that you notified them you were ready to go on with the job. Week after week elapsed, and finally, after the damage had already been done, then failure to give the proper notice was raised.

Mr. McCall: Is it not a fact, your Honor, if before that time, as we claim, the obligee had failed to perform a condition precedent set out in the surety contract, then there would be no liability on the part of the surety to respond, when he said he had taken over.

The Court: Provided the surety had washed its hands of the fact. Provided the surety had sent in a man there to straighten it out. On the other hand, when the surety goes in, and tries, with the prime contractor, to straighten things out, and gives a sense of security to anybody who has worked for them he cannot be heard later on to say, Well, I did not find out a lot of other things that happened before.

Mr. McCall: In the California cases——

The Court: I know, but we have a right to interpret the facts. I am bound by the law of California, but I am not bound by any law of California as to how to interpret the facts and the inference drawn from the failure to act, and what inference is to be drawn from the testimony of the witnesses, and from letters and documents offered in evidence, and the Circuit Court of Appeals will not reverse my findings unless, under the new rules, I am clearly wrong.

So I am submitting to you why I now believe some of the deficiencies have been supplied as I did to the plaintiff the last time, because the deficiencies were in the plaintiff's proof. Other glaring deficiencies appeared in your defense, which I pointed out, and from which I will draw the proper infer-

ence at the proper time. But it does seem to me, as I look back, that this is a case where the surety company at no time took a definite stand on anything. All it did was to promise to do this and to do that. Supposing that they had left all their own equipment there, not being used, and continued to charge?

Another thing I learned today was about the relationship of the equipment. That was not clear to me before. Now it is very clear to me that this equipment was hired out to them. It was equipment which they hired from others for the benefit of Duque & Frazzini, and did not charge one dime as a profit, but were merely accommodating them. So, while in truth and in fact they were legally liable, as a matter of fact, under the law of California, they could have been held as an undisclosed principal, on a contract made for the benefit of third parties.

When this testimony was coming in I purposely did not make any comments, and I asked very few questions, and the only time I express them is while both of you are before me.

Mr. McCall: Reverting to these letters again, may it please the court, I have just read excerpts from them. They demanded right up to the last that Duque & Frazzini stay on the job, and continue their performance. The sureties certainly could not get on the job until the subcontractors had pulled off.

The Court: But the surety did nothing; they did not say to Duque & Frazzini, stay on the job, or

we will take it over. Where is there any letter to that effect?

Mr. McCall: I understand the court to say, in the comments here, in effect, that the surety had a right to stand on the terms——

The Court: I did not. I am sorry you misunderstood me. I was not discussing a question of fact, because I did not know what facts would be brought in. I said on the face of it it looked to me that way. Now I have stated how it looks to me in the light of additional testimony. I notice I addressed that as a query to Mr. Monteleone. Then afterward I turned around and I said: I don't want you to feel I was not talking to you at the same time. But the reason I was doing that was to point out certain weaknesses in the case which had to be explained before I could decide the facts in this case. I don't think it is the law, and it is naturally not the right of the surety, despite the knowledge of what was going on, and with the knowledge of the contractor, to just stand by and say, I will see that I get the right notice. And when they gave the notice it was too late.

Mr. McCall: I do not know of any place where the surety could have, under the law, gone in on that job.

The Court: If that is your answer, that is all right. The object of my inquiry is to get as much light as I can. I have not learned to be a judge, except by the Socratic method. That is why I like oral argument, because I can ask questions of the writer of the brief. No matter how elaborate the

briefs are, it is helpful in clarifying the thoughts to counsel.

Mr. McCall: I further understood on that point that the court had agreed with me that the notice, of the letter of April 5, was only a letter demanding something, and that it could not be considered a notice. If we take the letter of the plaintiff here, they have not given notice at all at any time during the proceeding, that is required by the surety company—notice of default. And counsel has said in this court, which is reflected in the transcript of the pre-trials, that there was no default until June 8th.

The Court: I always said that the main point in the case was the measure of control. On page 25 I said.

“The Court: In view of the fact that the case is going to be reopened for the purpose of showing the true relationship between the parties, and answering the proposition of what, if any, measure of control may have been exercised, it is important to note that the Supreme Court of Arizona, in applying these principles, has insisted that modifications are not the basis for exonerating the surety, if they are of such character that the court can say that the essential features and objects of the original contract were maintained. If the changes are of substance, even the liberal Arizona law would not release the surety, and this for the very obvious reason which the court gave in the case referred to, Prescott National Bank vs. Head, that even a literal interpretation will not be allowed

if the changes, in effect, make a new contract a substitute for the original contract. \* \* \*

“In other words, even the Supreme Court of Arizona, liberal as it is, does not say that you can make a change of a substantial nature in the relationship of the parties and still hold the surety, who has no knowledge of the changes, and was not consulted before they were agreed to by the parties, because I think if that were true the Arizona decision would lead to an absurdity, and would subject the surety company to obligations upon modified conditions which its bond did not underwrite. So that even if I adopt the view that this is an Arizona contract we still have the problem of whether these changes are substantial or not, because if they were, then, of course, the same rule would apply as applied if we consider the contract, as I am inclined to at the present time, a California contract to be governed by California law.

“Mr. Monteleone: What changes does your Honor contend were made in the contract that this contract itself does not specify?

“The Court: I am not making findings as to what changes were made. I am merely saying that the defendants contend that many changes were made.”

Then I said,

“I am not deciding the case. The only conclusion I have reached is that this contract is governed by the California law and not the Arizona law. \* \* \* I am talking about changes \* \* \*

“In the complaint plaintiff alleges that the defendants have been in default ever since the beginning, and at all times thereafter. I will read the allegation, which is Paragraph X. \* \* \*

“Mr. Monteleone: I don't think there was a default. I took the position that there were partial defaults.

“The Court: You cite the case of Union Sugar Company vs. Hollister Estate to this effect, but it does not alter the position. When the first breach occurs it is not the duty of the other side to treat the contract as abandoned. He may not do anything about it, and then rely upon a subsequent breach.”——

That is the very point. In fact, I minimized it—“That is a general proposition of law. And in the case you cite, in 3 Cal. 2nd, 740, the court made that statement merely in order to save the claim from the statute of limitation. In other words, they said that where several breaches occur you are not bound to wait until the first breach. You can wait for the next breach and the next one, then date your claim, so far as the statute of limitations is concerned, from the last breach.

“That does not solve the problem here, because counsel say that up to April 5th, when you gave them the first written notice of any difficulties, that several breaches had already occurred, and that you had failed to give them notice.”—I was talking about your contention—“Therefore, it became very important that all the evidence relating to what

actually took place, if there is any more than is contained in these affidavits of the two men, Kovick and Nick Basich, be gone into, and not leave anything for further discussion.”

Another thing is this: A man does not have to consider a breach unless it is substantial, if he is assured, as he was assured in this case, that additional equipment would be secured.

I did not say what you contend. I merely pointed out that in view of the allegations that you made, dating back to the breach—not the date they allege, because of prior breaches, the matter should be clarified. I may have used language which was broad, and I stated to counsel repeatedly that I was not deciding anything except one point; that the contract is governed by California law. That is the only thing I said. Is there anything further?

Mr. Monteleone: Nothing further.

The Court: The matter will stand submitted.

#### CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.



Dated at Los Angeles, California, this 4th day of April, A.D. 1947.

HENRY A. DEWING,  
Official Reporter.

[Endorsed]: Filed May 16, 1947.

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PLAINTIFF'S EXHIBIT No. 1

Subcontract Agreement

[Plaintiff's Exhibit No. 1 is identical with Exhibit A attached to Complaint for Recovery of Money and on Bond, and is set out on pages 17 to 32.]

[Endorsed]: Filed U.S.C.C.A. June 15, 1947.

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PLAINTIFF'S EXHIBIT No. 2

Subcontract Bond

[Plaintiff's Exhibit No. 2 is identical with Exhibit B attached to Complaint for Recovery of Money and on Bond, and is set out on pages 32 to 36.]

[Endorsed]: Received in evidence U.S.D.C. Sept. 30, 1946.

## PLAINTIFF'S EXHIBIT No. 3

[Letterhead Glens Falls Indemnity Company  
of Glens Falls, New York]

Los Angeles 13, Calif.

March 7th, 1945

Re: Duque & Frazzini to Basich Bros.  
Construction Co. Contract bond

Basich Bros. Construction Co.  
600 So. Fremont Ave.  
Alhambra, Calif.

Gentlemen:

It is hereby understood and agreed that the 10 days appearing in paragraph "First" is changed to read "Twenty (20) days".

[Seal]                   GLENS FALLS INDEMNITY  
Company,

By: MARWIN F. JONAS,  
Attorney.

[Pencil Notation]: Requested to issue income for bond premiums 4/3/45—M. Klotz.

[Endorsed]: U.S.D.C. Received in evidence Sept. 30, 1946.

PLAINTIFF'S EXHIBIT No. 4

(Copy)

[Letterhead Basich Brothers Construction Co.]

Registered Mail

April 5, 1945

Duque and Frazzini,  
P. O. Box 73,  
Tonopah, Nevada

Gentlemen:

Reference is made to our Contract Agreement, dated February 7, 1945, in which you agreed to commence crushing material with one plant on February 19, 1945. It was further agreed that you were to move in two plants, each capable of producing 800 cubic yards per day of suitable material.

Your attention is directed to the fact that the plant did not commence work on February 19th; furthermore, to date you have not averaged 800 cubic yards of material per plant per day.

Since we reserve the right to compel you to move in additional equipment to insure proper completion of your contract, we hereby demand that you move in additional and suitable equipment in order to produce the amount agreed upon in our contract.

Our entire concrete paving operation is dependent on your production and you are reminded that your Company is now using our tools and equipment,

since you do not have suitable equipment of your own on the job.

Very truly your,

BASICH BROTHERS CON-  
STRUCTION CO.,

By N. L. BASICH.

cc: Duque & Frazzini, Tucson, Ariz.

cc: Glens Falls Indemnity Co.,

Los Angeles, California.

GJP/de

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 5

[Letterhead Stephen Monteleone]

April 27, 1945

To Duque & Frazzini

P. O. Box 73

Tonopah, Nevada,

and

Glens Falls Indemnity Company

of Glens Falls, New York;

801 Fidelity Building,

548 South Spring Street

Los Angeles 13, California

You and each of you are hereby notified that:

Whereas, on February 7, 1945, Basich Brothers Construction Company, as first party, entered into a written contract with said Duque & Frazzini as second parties by the terms of which said contract said second parties, as subcontractors, agreed to

perform certain of the requirements therein specifically stated in connection with the contract between first party as the Prime Contractor and the United States of America for the construction of Taxiways, warm-up and parking aprons, Job. No. Davis-Monthan ESA 210-6, 210-8, and 210-9, Davis-Monthan Field, Tucson, Arizona, Contract No. W-04-353-Eng.-1302;

Whereas, in said contract between said first party and said second parties of date February 7, 1945, it is provided, among other things, that if said second parties, as such sub-contractors, shall fail to prosecute said work continuously with sufficient workmen and equipment to insure its completion, first party, within five days will reserve the right to compel said subcontractors to move in another plant;

Whereas, said second parties, as such subcontractors, agreed to erect two plants, each to produce 800 cubic yards of suitable material a day to be used in connection with said Government Contract;

Whereas, said second parties agreed, in said contract of date February 7, 1945, to commence their work not later than February 19, 1945, and shall complete the same on or before June 3, 1945;

Whereas, it is therein further provided that time is of the essence of said contract;

Whereas, said second parties have failed to comply with the obligations imposed on them in said contract of date, February 7, 1945, in that, among other things, they have failed to prosecute said work continuously with sufficient workmen and equipment as therein required; and further, they have

failed to produce 800 cubic yards of suitable material a day from each of said two plants but instead have produced less than fifty per cent thereof;

Whereas, on April 5, 1945, said Basich Brothers Construction Company notified said Duque & Frazzini and its surety, said Glens Falls Indemnity Company of the aforesaid failure to comply with said contract of date February 7, 1945, and demanded that additional and suitable equipment be moved on the job to produce the amount of material as in said agreement provided, all of which both said second parties and their said surety company failed to do;

Now, therefore, you, the said Duque & Frazzini, as principals, and said Glens Falls Indemnity Company as the surety of said principals, are, and each of you are, hereby notified that said Basich Brothers Construction Company will hold you and each of you responsible for all direct and consequential damages sustained by them by reason of said failure to comply with said contract and any future damages, both direct and consequential, which may result by your continued failure to comply with the above requirements of said contract;

You, and each of you are hereby notified that said Basich Brothers Construction Company will exercise all reasonable efforts to minimize said damages and will endeavor to, and if possible, will install additional and independent means of produce the required material without in any manner waiving its claims or any rights against you and each

of you or in any manner releasing you or any of your obligations, past, present and future, under said contract of date February 7, 1945.

Dated: April 27, 1945.

BASICH BROTHERS CON-  
STRUCTION COMPANY,  
/s/ By STEPHEN MONTELEONE,  
Its Attorney.

SM/gr

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 6

[Letterhead John E. McCall]

May 8, 1945

Mr. Stephen Monteleone  
Attorney at Law  
Petroleum Building  
714 West Olympic Boulevard  
Los Angeles 15, California  
Re: Subcontract between Basich  
Brothers Construction Co.  
and Duque & Frazzini  
Our File No. 2025

Dear Mr. Monteleone:

Your letters of April 27th, 1945 addressed to Duque & Frazzini and Glens Falls Indemnity Company has been referred to me by my client Glens Falls Indemnity Company for attention and reply as to the Surety. This will also confirm the con-

versation of May 3rd, 1945 between you, Mr. N. L. Basich, Mr. John Bray and myself.

In our conversation last Thursday I understood that your client has suffered no damage by reason of any delay on the part of the subcontractor to date, but is fearful that the equipment which the subcontractor is using at this time will fail to furnish or turn out enough base material to finish the job on schedule.

As I understand it, there are two plants on the job operated by the subcontractor. One plant was rented to the subcontractor by your client, and Mr. Basich stated that there is no complaint about the quantity of aggregates turned out by this plant. I understand there is another plant in the same vicinity which is owned by the subcontractor, smaller in size than the plant belonging to your client. Your client states that this latter plant does not have the capacity to turn out a sufficient amount of material which, added to the material turned out by the other plant, will finish the job on time.

I was advised by Mr. Bray this morning that he called Duque & Frazzini and was told that they are now turning out the required quantity of material, and if necessary they will operate another shift.

I am sending a copy of this letter to Messrs. Duque & Frazzini at Tucson, Arizona, and I feel sure they will co-operate with your client to the fullest extent.

It is always a pleasure to work with you. If any friction arises between the contractors regarding the work in question, I shall be glad to work with you



in an effort to secure complete co-operation between them.

Yours very truly,

J. E. McCALL.

JEMcC:mc

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 7

[Letterhead Stephen Monteleone]

May 15, 1945

Mr. John E. McCall  
Attorney at Law  
458 South Spring Street  
Los Angeles 13, California

Re: Sub-contract between Basich  
Brothers Construction Company and  
Duque & Frazzini.

Dear Mr. McCall:

I beg to acknowledge receipt of yours of the 8th inst., in reference to the above matter. Apparently your Mr. Bray must have accomplished good results for the reason that I have heard nothing further from my client Basich Brothers Construction Company in connection with the above matter.

I note in your said communication that you stated that Mr. Basich in his conversation at your office claimed that he suffered no damage by reason of any delay on the part of the subcontractor to

date. This apparently is a misunderstanding on your part. Mr. Basich did state that he does not intend to make any claim for any damages in the past provided Duque & Frazzini would cause no delay in the operation in the future. He indicated that he was only concerned in finishing the job and not in making any claim for damages against your company or the sub-contractor, provided there was no future delay which would entail the suspension of his operation with the loss of a payroll amounting to \$3,000.00 a day.

I felt that with the cooperation existing between us all, there will be no further revival of this matter and I want to take this occasion to thank you and your company for all they have done to eliminate any danger in connection with the suspension of my client's operation.

Your truly,

/s/ STEPHEN MONTELEONE,

SM/gr

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

PLAINTIFF'S EXHIBIT No. 8

[Letterhead Stephen Monteleone]

May 23, 1945

To Duque & Frazzini,  
P. O. Box 73,  
Tonopah, Nevada,  
and

Glens Falls Indemnity Company of Glens Falls,  
New York,  
801 Fidelity Building,  
548 South Spring Street,  
Los Angeles 13, California.

Gentlemen:

You and each of you are hereby notified:

That on February 7, 1945, Basich Brothers Construction Company, prime contractor as first party, entered into a written contract with Duque & Frazzini as sub-contractor, second parties, in connection with the construction of taxiways, warm-up and parking aprons, Job No. Davis-Monthan ESA 210-6, 210-8 and 210-9, Davis-Monthan Field, Tuscon, Arizona, Contract No. W-04-353-Eng. 1302;

Whereas, pursuant to said contract, Glens Falls Indemnity Company of Glens Falls, New York, executed, as surety, and said Duque & Frazzini as principals, a sub-contract bond in favor of Basich Brothers Construction Company in the sum of \$101,745.55, dated Febraury 20, 1945;

Whereas, each of you were notified on April 5, 1945, that said Duque & Frazzini, as sub-contractor,

failed to commence work within the time specified in said contract of date February 7, 1945, or to prosecute said work continuously with sufficient workmen and equipment to insure its completion as in said contract provided and, pursuant to the rights therein reserved in favor of said prime contractor, it notified you of said failure on the part of said sub-contractor and required that additional and suitable equipment be moved on the job in order to produce the amount of material required under said contract;

Whereas, you, Duque & Frazzini as principal, and you, Glens Falls Indemnity Company, as surety, failed to correct said breach or to comply with the above requirement;

Whereas, on April 27, 1945, Basich Brothers Construction Company again notified you in writing of said failure on the part of said Duque & Frazzini to comply with said contract of date February 7, 1945, and, although you and each of you have promised to correct said default on the part of said sub-contractors, this you and each of you have failed to do;

Now, therefore, you, Duque & Frazzini, as Principal on said bond, and you, Glens Falls Indemnity Company, a surety thereon, are again notified that said Duque & Frazzini have failed to correct their said default in that they are not prosecuting said work with sufficient workmen and equipment to insure its completion within the specified time; furthermore, that instead of each of the plants re-

ferred to in said contract of date February 7, 1945, producing 800 cubic yards of suitable material as therein required, each of said plans is producing an average of approximately 300 cubic yards a day;

You and each of you are further notified that these facts were not only called to your attention by the above previous written notices but were personally called to the attention of your representatives in person and over the telephone on numerous occasions.

You and each of you are hereby notified that said prime contractor will hold you and each of you strictly accountable under said contract of date February 7, 1945, and said bond of date February 20, 1945, both for all past damages sustained and for all future damages which may hereafter be sustained by the continued default on the part of said sub-contractor to comply with said contract of date February 7, 1945; however, you and each of you are again hereby notified to correct said default.

Yours truly,

BASICH BROTHERS CON-  
STRUCTION COMPANY,  
/s/ By STEPHEN MONTELEONE,  
Its Attorney.

[Endosed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

## PLAINTIFF'S EXHIBIT No. 9

[Letterhead Stephen Monteleone]

May 24, 1945

To Duque &amp; Frazzini

P. O. Box 73

Tonopah, Nevada,

and

Glens Falls Indemnity Company of

Glens Falls, New York,

801 Fidelity Building

548 South Spring Street

Los Angeles 13, California.

Gentlemen:

You and each of you are hereby notified:

That on February 7, 1945, Basich Brothers Construction Company, prime contractor as first party, entered into a written contract with Duque & Frazzini as sub-contractor, second parties, in connection with the construction of taxiways, warm-up and parking aprons, Job No. Davis-Monthan ESA 210-6, 210-8 and 210-9, Davis-Monthan Field, Tuscon, Arizona, Contract No. W-04-353-Eng. 1302;

Whereas, pursuant to said contract, Glens Falls Indemnity Company of Glens Falls, New York, executed, as surety, and said Duque & Frazzini as principals, a sub-contract bond in favor of Basich Brothers Construction Company in the sum of \$101,745.55, dated February 20, 1945;

Whereas, Article XI of said contract of date February 7, 1945 requires the sub-contractors to

promptly make payment to all persons supplying them with labor, materials and supplies for the prosecution of the work or in connection therewith and in the event the sub-contractor shall not make such payments, the prime contractor may make said payments and deduct from any moneys due the sub-contractor such advancements.

Whereas, it is provided in the bond of said sub-contractor of date February 20, 1945, that the principal and surety agree to pay all just labor claims arising under said contract within two weeks after demand.

You, and each of you, are hereby notified that said sub-contractors are not paying the just labor claims arising under said contract of date February 7, 1945 and, apparently will encounter difficulty in continuing the payment of said labor claims.

You, and each of you, are hereby notified that pursuant to said Article XI contained in said contract of February 7, 1945, the prime contractor has made labor payments, material payments and supply payments for said sub-contractors in the past for the prosecution of said work but that the amount of moneys due the sub-contractors is not sufficient to meet the past advancements made by the contractor Basich Brothers Construction Company; that such deficiency shall be chargeable against the sub-contractors and the above surety Glens Falls Indemnity Company. As soon as an account can be prepared on this matter, the same will be submitted to you.

You are hereby further notified that demand is

hereby made upon the said principal and the said surety on said bond to make all present payments due on labor claims arising under said contract and all further and future labor claims as provided in said bond and in said agreement of date February 7, 1945, and, upon failure to do so, the contractor, Basich Brothers Construction Company, will make said payment and charge the same against said surety and said principal.

As this matter is of vital importance in the prosecution of this work, will you kindly advise me of your disposition in connection with the above request and demand at your earliest convenience and also acknowledge receipt of this notification.

Yours truly,

BASICH BROTHERS CON-  
STRUCTION COMPANY,

/s/ By STEPHEN MONTELEONE,

Its Attorney.

SM/gr

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.



PLAINTIFF'S EXHIBIT No. 10

(Copy)

[Letterhead Basich Brothers Construction Co.]

June 1, 1945

Duque and Frazzini,  
Post Office Box 73,  
Tonopah, Nevada,  
and  
Glens Falls Indemnity Company  
of Glens Falls, New York,  
801 Fidelity Building,  
548 South Spring Street,  
Los Angeles 13, California.

You and each of you are hereby notified that:

Whereas, on February 7, 1945, Basich Brothers Construction Company, as first party, entered into a written contract with said Duque and Frazzini as second parties by the terms of which said contract said second parties, as subcontractors, agreed to perform certain of the requirements therein specifically stated in connection with the contract between first party as the Prime Contractor and the United States of America for the construction of Taxiways, warm-up and parking aprons, Job No. Davis-Monthan ESA 210-6, 210-8, and 210-9, Davis-Monthan Field, Tucson, Arizona, Contract No. W-04-353-Eng.-1302;

Whereas, your attorney, Mr. John McCall, was this date advised via telephone that we have just

received information that your insured, Duque and Frazzini, shut down their small crushing plant on May 31, 1945, and contemplate closing the Pioneer plant June 2, and June 3, 1945.

This letter is to confirm the above mentioned telephone conversation and to inform you of the current situation. As you have been frequently instructed, any suspension for an appreciable time of operation of the plants concerned will result in a terrific loss to us, as we are dependent upon materials required to be furnished by your insured, in order that we may carry on our operations.

We wish to further advise you that we will take such action, as we are able under the circumstances, to meet the requirements on our part to perform this vital defense project for the U. S. Government and, at the same time, to attempt to minimize our loss and our claim which we will be compelled to make against you under your contract and bond.

As you have been previously advised, our efforts to minimize this loss will encounter a great many obstacles and difficulties. We have received no cooperation whatever from you to minimize such loss; nevertheless, we will make all reasonable efforts in this connection, either in attempting to procure sufficient equipment to produce the deficiency in materials required of the subcontractor, or in attempting to procure the deficiency of materials through other sources, and we will make all charges and other reasonable expenses incurred in this con-

nection against you as the principal and surety on the bond furnished to us.

Very truly yours,

BASICH BROTHERS CON-  
STRUCTION CO.,  
/s/ By GEORGE J. POPOVICH,  
Secretary.

cc: Duque & Frazzini,  
Tucson, Arizona.

John McCall,  
Los Angeles, Calif.

Stephen Monteleone,  
Los Angeles, Calif.

GJP/dc

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 11

[Letterhead John E. McCall]

June 7, 1945

Basich Brothers Construction Company  
c/o Stephen Monteleone, Attorney  
714 West Olympic Boulevard  
Los Angeles 15, California

Gentlemen:

This will acknowledge receipt of copy of letters which you addressed to Duque & Frazzini, at Tonopah, Nevada, May 23rd, 24th and June 1st, 1945,

with reference to a subcontract which they have with you.

The third paragraph of your letter of May 23rd, 1945 states that said subcontractors did not commence work within the time specified in said contract, but you did not state when the subcontractors did commence work on said contract. We would like to have this information, together with any and all other information you may be able to give us concerning matters which in your opinion amount to a default on the part of said subcontractors. The subcontractors deny that they are in default in any way whatever.

Your letters of May 24th, 1945 refers to Article XI of the contract, which provides that the subcontractors will pay for all labor and material, but you overlooked Subsection 2 of Article XXI of the contract which expressly provides that your client will pay, among other things, the weekly payrolls for labor. You further state, on the second page of your said letter of May 24th, that you will pay labor claims and charge same to the Surety and subcontractors. You of course realize that your client has no right to charge anything to the Surety, as the Surety has no liability whatever except such liability as may exist under the express terms of its bond.

Your letter of June 1st stated that you had been informed that Duque & Frazzini shut down their small crusher plant on May 31st. I communicated this information to my client, and I am advised by Mr. Bray that he has received information from

the subcontractors that there was a short breakdown of the small plant, but satisfactory production has been restored.

After receipt of your two letters of May 23rd and 24th, the write, with Mr. John Bray, made a trip to the job at Tucson, at which time you were present, and we were advised by the subcontractors and by your client at the site of the plants crushing the rock and making the aggregates, that no time has been lost by your client because of under production, but on the contrary, there was enough material then ahead for several days concrete pouring. I am therefore unable to understand why your client wishes to put in additional equipment to take care of extra work when our information received from the subcontractors and from your client is to the effect that there has been no shortage whatever of aggregates to date. If this is not correct, please advise in what particular it is not correct so that I may communicate the information to my client.

Yours very truly,  
/s/ JOHN E. McCALL.

JEMcC:mc

[Envelope]: From John E. McCall, Attorney at Law, 458 South Spring Street, Los Angeles 13, to Basich Brothers Construction Company, c/o Stephen Monteleone, Attorney, 714 West Olympic Boulevard, Los Angeles 15, California.

[Stamped Los Angeles, Calif. Jun 8, 4:30 P.M., 1945.]

[Endorsed]: U.S.D.C. Received in evidence Sept. 30, 1946.

## PLAINTIFF'S EXHIBIT No. 12

June 8, 1945

To Duque & Frazzini,  
P. O. Box 5416,  
Tucson, Arizona,  
and

Glens Falls Indemnity Company  
of Glens Falls, New York,  
801 Fidelity Building  
548 South Spring Street  
Los Angeles 13, California

You, and each of you, are hereby notified that:

On February 7, 1945, Basich Brothers Construction Company, prime contractor as first party, entered into a written contract with Duque & Frazzini as sub-contractor, second parties, in connection with the construction of taxiways, warm-up and parking aprons, Job No. Davis-Monthan ESA 210-6, 210-8 and 210-9, Davis-Monthan Field, Tucson, Arizona, Contract No. W-04-333-Eng. 1302;

Whereas, pursuant to said contract, Glens Falls Indemnity Company of Glens Falls, New York, executed, as surety, and said Duque & Frazzini as principals, a sub-contract bond in favor of Basich Brothers Construction Company in the sum of \$101,745.55, dated February 20, 1945;

Whereas, on April 5, 1945, we notified you, pursuant to our right under the contract of date February 7, 1945, to move in additional and suitable

equipment to produce the amount of material agreed to in said contract because of your failure at the time of said notice to prosecute said work with sufficient men and equipment as therein required. We then, in said notice, called to your attention, that the entire concrete operation of said prime contractor was dependent upon the production of said sub-contractor. Although you made an investigation of the situation and the said Surety Company sent its representative to Tucson, Arizona, to acquire first hand information and was offered the co-operation and valuable advice of the prime contractor, you failed to remedy the situation at said time.

Whereas, on April 27, 1945, we again notified you of the failure of the sub-contractor to provide sufficient men and equipment to prosecute said work and demanded that additional and suitable equipment be moved on the job to furnish the material as required in said contract of date February 7, 1945. We notified you, at said time that we would hold you and each of you responsible for all direct and consequential damage resulting therefrom. Although you conferred with us on the situation and again sent a representative to Tucson, Arizona, to investigate the situation and, although the prime contractor offered to co-operate with you in every way possible to correct the situation, you did nothing concrete to comply with the requirements of the contract. We also notified you at said time that in an effort to minimize the damages we would en-

deavor to install additional and independent means, if possible, to produce the required material without in any manner waiving our claims or any rights against you and each of you of any of your obligations, past, present and future.

On May 7, 1945, a conference was had with the representative of the surety company and its attorney, at which time the prime contractor again sought action by you and offered to co-operate to alleviate a serious situation confronting the prime contractor and the completion of an essential defense project.

Whereas, on May 24, 1945, we notified you that the prime contractor had made labor, material and supply payments for the sub-contractor but that the amount earned by the sub-contractor was less than the payments made on account of the above, demanded that you make such payments direct pursuant to your legal obligation.

Whereas, on June 1, 1945, we again notified you of the failure on your part to comply with the above requests and demands, although we spent three days in Tucson with you to meet the serious situation, and, on said date of June 1, 1945, again notified you that we would take such action as we would be able under the circumstances to meet the requirements to perform this vital defense project and minimize the damages, either by procuring sufficient equipment to produce the deficiency or procure the deficient material from other sources and charge all expenses therein incurred against you as principal and surety, respectively.



You are hereby notified that, failing to receive any co-operation from you, or either of you, except promises and assurances, we have been compelled to install a pioneer crushing plant for producing gravel base and operations thereon have commenced on or about June 7, 1945. This action on our part is for your benefit and in order to minimize the damages pursuant to previous notices given you, as aforesaid, and all charges for moving in and out, assembling and disassembling and operating said plant, including labor, materials, oil and other reasonable requirements will be charged against you.

You are failing to comply with your obligations in providing sufficient concrete aggregate and your sand-screening plant is not efficiently operating according to the requirement of said contract. This situation can be improved by operating longer hours and in a more efficient manner. Unless this situation is corrected within three days, we contemplate using all reasonable means and sufficient equipment to meet this requirement in order to minimize the damages and charge all expenses incurred in this regard, including operating expenses against you.

You and each of you are hereby further notified that on this date, June 8, 1945, Duque & Frazzini refused to load trucks of Basich Brothers with gravel base material from their plant. Demand is hereby made on you to continue your operations under said contract pursuant to the requirements

therein contained. All action taken by us is for your benefit in minimizing your damages which we are sustaining, as aforesaid, and, at the same time to permit us to complete an essential defense project for the United States Government. That the Government is vitally interested in this respect is evidenced by a letter which we received from the War Department dated June 7, 1945, a copy of which is herewith enclosed.

Demand is hereby further made on you to pay direct all labor and other expenses of said sub-contractor in the future and to pay to the prime contractor all payments made by them for the sub-contractor representing the difference between the amount of money earned by and unpaid to the sub-contractor and the payments made by the prime contractor for said sub-contractor.

Kindly give this matter your prompt attention and advise.

Yours truly,

BASICH BROTHERS  
CONSTRUCTION  
COMPANY,

By /s/ STEPHEN MONTELEONE,  
Its Attorney.

[Letterhead War Department, U. S. Engineer Office  
Southern Arizona Section, 401 West Adams,  
Phoenix, Arizona]

[Copy]

P. O. Box 1711,  
Tucson, Arizona

June 7, 1945.

Subject: Materials Production — Contract W-04-  
353-Eng.-1302, Job No. Davis-Monthan  
ESA 210-6, 8 and 9, Taxiways, Warm-up  
and Parking Aprons, Davis-Monthan  
Field, Tucson, Arizona.

To: Basich Brothers Construction Company.  
P. O. Box 5416,  
Tucson, Arizona.

Att: Mr. G. W. Kovick, Supt.

Gentlemen:

This office desires to call attention to the manner in which material is being produced by your sub-contractor, Duque & Frazzini, for use on subject job and the delay which has been caused in the progress of the job due to unsatisfactory handling of material production.

This office has observed closely the production of gravel base course, mineral aggregate, and concrete material since these operations were begun. At the present time the heart of the material pit has been worked out and it now takes more effort and more time to procure good material of which there is

still an abundance at this particular location. As stated by this office in a letter of February 19, 1945, this office is of the opinion a shovel should have been used in this pit. Due to the mixing of the materials which would be accomplished by the use of a shovel, a far better grade of material would be obtained in your base course. Your subcontractors, however, elected to use carryalls. This has resulted in production of gravel base course which has alternated from fine to coarse, causing a certain amount of delay in mixing and handling of the material on the grade. The following figures are cited to direct attention to the uneven production of base course material:

May 27th.....	475 cu. yds.
May 28th.....	605 cu. yds.
May 29th.....	980 cu. yds.
May 30th.....	610 cu. yds.
May 31st.....	750 cu. yds.
June 1st.....	0 cu. yds.
June 2nd.....	no record
June 3rd.....	0 cu. yds.
June 4th.....	0 cu. yds.
June 5th.....	400 cu. yds.

At the present time there is practically no material on hand to lay the remaining plant mix on the job.

In regard to your concrete work the following figures are cited:

1. May 31st—Mixer shut down 30 minutes due to badly graded material. This necessitated

changing of the mix from a 3-inch maximum to a 1½-inch maximum to finish the concrete pour on this day.

2. June 1st—Badly graded aggregate again encountered.

3. June 2nd—Shut down at 11:00 a.m. due to no aggregate in stock pile.

4. June 4th—Changed back to 3-inch maximum mix.

5. June 6th—Stopped pour at 2:30 p.m. due to no aggregate in stock pile.

Your sand screening plant ran steadily from May 1-15 and then shut down until June 1st; on June 1st it was started again and ran until 12:00 noon on June 2nd when it again broke down; started again June 6th at noon, and at the present time is being fed very slowly. Your stock pile consists of approximately 200 yards of sand.

Your Pioneer plant made gravel base course from May 11-15 and was down on the 16th and 17th, on the 18th it started making material for paving, and on the 19th ran from 7:30 a.m. to 9:30 a.m. and shut down. Your subcontractor claimed that they were out of material in the pit. The plant was down on the 20th, ran on the 21st, 22nd and 23rd, was down one-half day on the 24th, ran 2½ hours on the 25th, ran ½ day on the 26th, all day on the 27th, the plant was down, ran all day the 28th, ran ½ day the 29th, ½ the 30th, ran all day the 31st, on June 1st ran until 2:00 p.m. when burned out motor caused shut down, on June 2nd ran all day, June

3rd ran 8 hours, ran all day on 4th and 5th, 8 hours on June 6th, and at the present writing the plant is shut down. Your stock pile of #3 rock consists of approximately 30 yards at the present time.

This office has checked your stock pile regularly and it has been noticed that your subcontractor has confined his efforts to the production of one size aggregate at a time. This has resulted in at least one stock pile being always low, usually consisting of not more than 20 yards of material. This office is of the opinion that there should be stock piles of all aggregate sufficient to prevent shut down of paving operations should there be a breakdown of the Pioneer plant.

At the pit of the Pioneer plant, where your shovel is now operating, there is a three to four foot over burden of soil. This over burden was not removed and consequently the shovel loads this native soil along with the rock and is hauled to the crushing plant. Approximately at least 50% of such material is rejected and the rejects, incurred, are loaded into trucks and hauled back and put into the bottom of the pit. This causes the Pioneer plant to wait until sufficient rock is deposited in the feeder bins, resulting in a definite loss of motion and consequent slowing of progress of the job as a whole.

This office has contacted your Mr. Kovick time after time and suggested that the pit operations go on two shifts in order to produce sufficient aggregate to prevent shut downs in the field when breakdowns occur in the crushing plant.

This office is being severely criticized due to the very inefficient operation of your material production and the resultant slow progress of the job. The Base is badly in need of the facilities being constructed under the subject contract and, while this office is aware of the fact that you have obtained a new Pioneer crusher and set it up, it is still the opinion of this office that the present set-up is very poorly managed and that further immediate steps should be taken to correct the conditions herein stated.

Very truly yours,

/s/ B. C. WOLLUMS,

Resident Engineer.

cc: The District Engineer

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 13

June 9, 1945

To Duque & Frazzini,  
P. O. Box 5416,  
Tuscon, Arizona,  
Tonopah, Nevada.

Gentlemen:

We beg to acknowledge receipt of yours of the 8th instant in which you notified us that you were suspending operations under your contract with us of date February 7, 1945, in connection with the

furnishing of materials used on the Davis-Monthan Field being constructed by the War Department.

You claim therein that you had been proceeding with the performance of your contract until the last day or two when you experienced some delay on account of breakdown and attempted therein to justify suspension of your work because we started to produce material.

You have repeatedly failed to comply with your part of the contract in the past as both you and your surety, Glens Falls Indemnity Company had been notified, some of which specific acts or omissions on your part were set forth in a letter of date June 7, 1945, from the resident engineers for the War Department, a copy of which said letter was, on June 8, 1945, forwarded to you and your said surety, and which failures also appear in the records of the job available to you at all times. Again, on June 8, 1945, you refused to load trucks with base material required by your contract.

We have, on numerous occasions, notified you and your said surety, that if you failed to meet your obligations we contemplated producing additional material in order to minimize your damage and at the same time to enable us to complete for the Government an essential defense project. It was only after your failure to comply with these demands that we commenced producing material in compliance with the previous notices given you and for the purposes therein stated. In doing so, we have in no manner violated our contract.



Demand is hereby made upon you to proceed to carry on your operations and prosecute your work diligently with sufficient men and equipment, commencing on or before June 15, 1945. If, however, you persist in suspending your operations, we will deem your failure to resume operations on or before said date of June 15, 1945, as an act of default, and thereafter we will carry on the work for the benefit of your Surety Company unless it desires to make other arrangements to carry on your obligations under said contract.

In the meanwhile, if you desire us to use your own equipment after June 15, 1945, kindly notify us in writing on or before June 12, 1945, in order to otherwise enable us to make other arrangements if you do not proceed thereafter.

Meanwhile, while you are suspending your operations we will use some of your equipments necessary to produce material essential to prosecute the work until June 15, 1945, in order to minimize your damages.

A copy hereof is being forwarded to Glens Falls Indemnity Company, your surety.

Yours truly,

BASICH BROTHERS  
CONSTRUCTION  
COMPANY

By /s/ N. L. BASICH.

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

## PLAINTIFF'S EXHIBIT No. 14

[Letterhead Stephen Monteleone]

June 11, 1945

Glens Falls Indemnity Company of  
Glens Falls, New York,  
801 Fidelity Building  
548 South Spring Street  
Los Angeles 13, California

Gentlemen:

Enclosed herewith please find copy of notice which Basich Brothers Construction Company as Prime Contractor received June 8, 1945, from Duque & Frazzini, subcontractor and your insured in connection with their subcontract of date February 7, 1945, Job No. Davis-Monthan E.S.A. 210-6, 210-8 and 210-9, Davis-Monthan Field, Tucson, Arizona, which is self explanatory.

On June 9, 1945, we forwarded to you copy of notice sent to Duque & Frazzini referring to the contents of their said letter and advising them that unless they resumed operations on or before June 15, 1945, their failure to do so would be considered an act of default. This period of time was extended in order to give them an opportunity for mature reflection of their act in suspending operations which was materially impeding the prosecution of the war and which was in violation of the demand of the government engineer in charge that the prosecution of the work should not be impeded, otherwise the government would take a hand in

the situation. However, since forwarding said notification to Duque & Frazzini on June 9, 1945, we were advised on this date that Duque & Frazzini were threatening to remove their equipments from the job which information we immediately conveyed to your Attorney John McCall.

We, therefore, deem the acts and conduct of the sub-contractor a default on their part and request of you, as their surety, that you take such action as you may deem proper. Until you do so, the Prime Contractor, upon demand of the War Department, will proceed with the work for your benefit and will comply with all reasonable instructions from you.

Yours truly,

BASICH BROTHERS  
CONSTRUCTION  
COMPANY

By /s/ STEPHEN MONTELEONE,  
Its Attorney.

SM/gr

Tucson, Arizona  
June 8, 1945

Basich Bros. Construction Company  
Tucson, Arizona

Gentlemen:

Under contract of February 7, 1945, entered into with you, we are to furnish all material, supplies and equipment, except as otherwise provided in said contract, and perform all the labor required

to furnish certain materials for the work you are to perform under your original contract with the War Department, United States Engineer's Office, at the Davis-Monthan Field.

We have been proceeding with the performance of our contract with you, and have been furnishing the material required until the last day or two, when we experienced some delay on account of breakdown in equipment. This delay was unavoidable, but the equipment has now been repaired and we are again in operation.

You have now moved into the gravel pit near where we are working and have started to produce and are producing the materials which we are required to produce and furnish under our contract with you.

This is in direct violation of the contract, and the purpose of this letter is to advise you that we do consider your action a breach of the contract.

We are suspending our operation until you cease producing the material which we are required to produce under the contract, and unless you do immediately cease and remove the new equipment, we will remove our equipment from the job and treat your action as a breach of and a termination of the contract.

Very truly yours,

DUQUE & FRAZZINI

By

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

PLAINTIFF'S EXHIBIT No. 15

[Letterhead Stephen Monteleone]

June 11, 1945

Mr. John E. McCall  
Attorney at Law,  
458 South Spring Street  
Los Angeles 13, California

Dear Sir:

Your letter of date June 7, 1945, addressed to Basich Brothers Construction Company, c/o Stephen Monteleone, has been duly received on June 9, 1945.

You therein referred to copies of letters addressed to Duque & Frazzini of date May 23, 24 and June 1, 1945, with reference to subcontract they have with Basich Brothers Construction Company. These letters, together with other letters not therein referred to, were addressed and forwarded to both Duque & Frazzini and their surety and your client, Glens Falls Indemnity Company of New York.

You therein referred to letter of May 23, 1945, and erroneously referred to said letter as stating in the third paragraph thereof, that said subcontractors did not start work within the time specified in said contract. Reference was made in said letter of May 23, 1945, to a previous letter of date April 5, 1945, in which it was stated that work had not started within the time specified in said contract. Although your client was notified of said fact on April 5, 1945, apparently it considered the

to furnish certain materials for the work you are to perform under your original contract with the War Department, United States Engineer's Office, at the Davis-Monthan Field.

We have been proceeding with the performance of our contract with you, and have been furnishing the material required until the last day or two, when we experienced some delay on account of breakdown in equipment. This delay was unavoidable, but the equipment has now been repaired and we are again in operation.

You have now moved into the gravel pit near where we are working and have started to produce and are producing the materials which we are required to produce and furnish under our contract with you.

This is in direct violation of the contract, and the purpose of this letter is to advise you that we do consider your action a breach of the contract.

We are suspending our operation until you cease producing the material which we are required to produce under the contract, and unless you do immediately cease and remove the new equipment, we will remove our equipment from the job and treat your action as a breach of and a termination of the contract.

Very truly yours,

DUQUE & FRAZZINI

By

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

PLAINTIFF'S EXHIBIT No. 15

[Letterhead Stephen Monteleone]

June 11, 1945

Mr. John E. McCall  
Attorney at Law,  
458 South Spring Street  
Los Angeles 13, California

Dear Sir:

Your letter of date June 7, 1945, addressed to Basich Brothers Construction Company, c/o Stephen Monteleone, has been duly received on June 9, 1945.

You therein referred to copies of letters addressed to Duque & Frazzini of date May 23, 24 and June 1, 1945, with reference to subcontract they have with Basich Brothers Construction Company. These letters, together with other letters not therein referred to, were addressed and forwarded to both Duque & Frazzini and their surety and your client, Glens Falls Indemnity Company of New York.

You therein referred to letter of May 23, 1945, and erroneously referred to said letter as stating in the third paragraph thereof, that said subcontractors did not start work within the time specified in said contract. Reference was made in said letter of May 23, 1945, to a previous letter of date April 5, 1945, in which it was stated that work had not started within the time specified in said contract. Although your client was notified of said fact on April 5, 1945, apparently it considered the

same of no consequence as your said letter of date June 7, 1945, is the first request made inquiring when the subcontractor did commence work on said contract. For the information of your self and your client we have no direct knowledge when the work commenced but that Basich Brothers had no reason to believe that Duque & Frazzini had not sufficient workmen and equipment to insure the completion of said work as the contract provides until the early part of April, 1945. At that time they promptly and in the communication of April 5, 1945, called this fact to the attention of the subcontractors and their surety which letter your client received and which is self-explanatory.

You further inquired in your said letter of date June 7, 1945, concerning matters which in our opinion amount to a default on the part of said subcontractors. You are an attorney and, from information from time to time furnished your client, can probably form your own opinion as to whether the information furnished constituted a default on the part of the subcontractors or merely acts and omissions which caused us to sustain a loss and for which we notified your client, said surety company, we would hold it accountable on its bond. In other words, you are asking whether or not the failure on the part of the subcontractors to comply with the requirements of the contract, called repeatedly to the attention and some of which specific acts you will find in the copy of the letter of the resident engineer for the War Department which I forwarded to your client on June 8, 1945, constitutes a default or merely partial breach of



contract susceptible of more or less performance. I will leave that to you, as an attorney to decide and, if we are forced to take the matter to court, for the ultimate determination by the court.

You mentioned in your said communication concerning the liability of the respective parties to pay labor bills. This is also a matter of legal interpretation.

This is to confirm my talk to you over the telephone this day that Duque & Frazzini have not only suspended operations but are threatening to remove their equipments from the job. As far as shortage of material furnished by the subcontractor is concerned, the copy of the letter from the Government resident engineer which has been forwarded to the surety is self-explanatory.

If we can be of further service, kindly let us know.

Sincerely yours,

BASICH BROTHERS  
CONSTRUCTION  
COMPANY,

By /s/ STEPHEN MONTELEONE,  
Its Attorney.

SM/gr

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

## PLAINTIFF'S EXHIBIT No. 16

[Letterhead of Stephen Monteleone]

June 14th, 1945

Glens Falls Indemnity Company of  
Glens Falls, New York,  
801 Fidelity Building  
548 South Spring Street  
Los Angeles 13, California

Gentlemen:

Re: Sub-contract of your insured Duque & Frazzini, dated February 7, 1945, to furnish material on Job No. Davis-Monthan Field, Tucson, Arizona:

You have been recently advised in writing by us that your insured Duque & Frazzini had suspended operations and were threatening to remove their equipments from the above job. We then notified you of the sub-contractors' default and requested you to advise us as to what action you intend taking as their insurer on the bond furnished us. We later advised you by telephone that these sub-contractors have not only dismantled portions of their plant but were removing their equipments from the job. They have completed approximately sixty per cent of their contract, leaving approximately forty per cent not completed which, under their said contract, they agreed to complete on or before June 3, 1945.

We have repeatedly demanded of your insured and yourself as the insurer to take necessary steps

to prosecute this work in strict compliance with the requirements of this contract, in order not only to expedite an essential defense project but also to minimize the amount of damages the sub-contractors and you, as their insurer, were subjecting yourselves. Regardless of these demands, neither of you did anything to remedy the situation. Accordingly, after you were given ample notice, we took measures as you had been previously advised, to not only comply with the War Department's demand for the diligent prosecution of the work on this Bomber Base but also at the same time to minimize your damages which we are sustaining, have sustained and will continue to sustain by reason of the acts and omissions of your said insured as you have been, from time to time, informed.

By the provisions of your bond you have the right, within thirty days after default, to proceed or procure others to proceed with the performance of this contract. As you have not indicated to us, after you were heretofore notified of the default of your insured, that you desired personally to proceed with the performance of this contract, we assume that it was and is your intention that we proceed with the performance of this contract on your behalf. As you well know this job is an essential defense project of the Government in prosecuting the war and no suspension of this work would be tolerated by the War Department. Unless we hear from you upon receipt hereof of other plans you have to complete this contract, we will

assume it is your desire that we complete the same for you as the insurer of the sub-contractor. All of our records of costs and other matters connected therewith are at your disposal and we will furnish you with whatever information you may request.

May we hear from you at your earliest convenience.

Yours truly,

BASICH BROTHERS CON-  
STRUCTION COMPANY,  
By STEPHEN MONTELEONE,  
Its Attorney.

SM/gr

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 17

[Letterhead of John E. McCall]

June 23, 1945

Basich Brothers Construction Company  
C/o Mr. Stephen Monteleone, Attorney  
714 West Olympic Boulevard  
Los Angeles 15, California

Gentlemen:

Your letter of June 8th, 1945, addressed to Duque & Frazzini and Glens Falls Indemnity Company, and your letters of June 11th and 14th, 1945, addressed to Glens Falls Indemnity Company, have

been referred to me for attention and reply on behalf of the Glens Falls Indemnity Company only.

I do not represent the subcontractors Duque & Frazzini and do not know the full extent of their obligations to you, if any, but if you will examine the terms and conditions of the surety bond which was posted in this case I am sure you will realize that the Glens Falls Indemnity Company is not liable to you for any labor or materials or equipment performed or furnished to said subcontractors or anyone else in connection with the job in question.

Your letter of June 8th states that you have received no co-operation from either the subcontractors or the surety except "promises and assurances." Please advise us what co-operation you think you should have received from the surety, but which you have not received. I am sure you have received no "promises and assurances" other than those expressed in the terms of the surety bond. Said contract bond contains every condition under which you could have a claim or demand against the surety.

You further state that you are securing certain material and performing certain work which you are charging to the principal and surety. We do not know what agreement you may have with the subcontractors, but we are sure that you have no right to perform or furnish anything, or have anything performed or furnished and charge the same to the surety, and the surety will not recognize any claim you may make which is not expressly covered by the terms of its contract bond.

Your letter of April 5th, 1945, and several other letters received since that date state that the subcontractors did not commence work on the subcontract on February 19th, 1945, as required by the terms of their contract, but your letter of June 11th, 1945, states that you do not know when the subcontractors did commence work on the subcontract in question.

If you have wrongfully taken the contract over, as is indicated by your letters, or if you have failed to give notice required by the terms of the contract bond, or if you have failed in any other respect to perform any of the conditions precedent required of you by the terms of the bond, you can have no valid claim against the surety.

Yours very truly,

JOHN E. McCALL.

JEMcC:M

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 18

[Letterhead of Stephen Monteleone]

June 29, 1945

Mr. John E. McCall  
Attorney at Law  
456 South Spring Street  
Los Angeles 13, California  
Dear Mr. McCall:

Your communication of the 23rd inst., addressed to Basich Brothers Construction Company in refer-

ence to sub-contractor's bond issued by your client Glens Falls Indemnity Company to Duque & Frazzini was referred to me for attention.

I do not believe your said communication calls for any answer as it appears to me that it is couched with expression which you undoubtedly contemplate employing in the event of litigation. However, I may state that Basich Brothers Construction Company are looking to your client Glens Falls Indemnity Company to accept responsibility on their surety bond according to the terms and conditions thereof and the obligations imposed upon your client by law based upon all of the facts and circumstances of the case.

It is needless for me to state the contents of the bond as you are as familiar with the same as I am and it is not my purpose to enter into any legal discussion as to the meaning of its terms.

In answer to your request that you be advised in what way Basich Brothers Construction Company has not received cooperation from your client, may I state that you are as familiar with what was or has been done or is being done by your client in connection with rendering this cooperation as my client or myself. It is apparent from the tone of your letter that your client is attempting to evade its legal obligations and that we cannot expect any cooperation from it in completing the work which its insured had contracted to do but have since abandoned. As it has been repeatedly called to your attention and the attention of your client, the construction of this bomber base is a matter of

vital importance to the defense of our country and there can be no hampering or suspension in the completion of this work. You and your client may rest assured that Basich Brothers Construction Company are willing to cooperate 100% to expedite the completion of the work which your insured had undertaken but had abandoned at the least reasonable expense and will keep you advised in all respects in connection with any matter. Whatever data you or your client may request, including items of expenditures will be furnished you upon request and the records of my client are open for your inspection at any time. My client is merely striving to minimize the loss or damage to your client and its insured and, at the same time, complete this vital defense project as required by the Federal Government.

I note in your said communication that you stated that the letter of April 5, 1945, and several other letters received indicated that the sub-contractor did not commence work on or about February 13, 1945, as required by the terms of their said contract. An examination of these various communications will show that you are in error in making such a statement.

You are also incorrect in assuming that Basich Brothers Construction Company had unlawfully taken over the contract of the sub-contractor. You and your client have been fully advised from time to time of all matters in reference to the performance or lack of performance by these sub-contractors of the requirements of their contract not only by correspondence but verbally and also by your client's



own personal examination and investigation at the premises during the progress of this work.

Yours truly,

STEPHEN MONTELEONE.

SM/gr

[Endorsed]: U.S.D.C. Received in evidence  
Sept. 30, 1946.

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PLAINTIFF'S EXHIBIT No. 19

Important—Payment of premium on or before stipulated date is a condition which must be complied with to validate this policy.

Workmen's Compensation Policy  
No. 10495

Issued by The Industrial Commission of the State of Arizona to Basich Brothers Construction Co., Torrance, California. Effective July 2, 1943.

[Pencil notation]: Cancelled.

The Industrial Commission of Arizona (Hereinafter called the "Insurance Carrier") does hereby agree with the Employer (hereinafter called the "Employer"), named and described as such in the declarations hereinafter set forth and hereby made a part hereof, to insure the employer against liability under Chapter 56, Article 9, Arizona Code Annotated, 1939, and amendments thereto, known as "Workmen's Compensation Law," including liability to furnish medical and other treatment and care of insured employees as required by said law.

## Plaintiff's Exhibit No. 19—(Continued)

## Agreements

Compensation Law Made Part of Policy. Liability of Insurance Carrier. Notice of Injury and Claim. Bankruptcy Does Not Discharge Liability

And Agrees: That the provisions of this policy are subject to said law and that all such provisions inconsistent with said law are void; that all of the provisions of the said law, and amendments thereto, shall be and remain a part of this contract as fully and completely as if written herein; that the said Insurance Carrier shall be directly and primarily liable to the employee, or in the event of his death to his dependents, to pay the compensation and accident benefits, if any, for which the employer is liable; that the Industrial Commission, or the State of Arizona, for the benefit of the State Compensation Fund, may enforce in either of their names, either by filing a separate claim or by making the Insurance Carrier a party to the original claim, the liability of the Insurance Carrier in whole or in part for the payment of compensation and accident benefits; that as between the employee and the Insurance Carrier the notice or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge of the Insurance Carrier; that jurisdiction of the Employer shall be jurisdiction of the Insurance Carrier; that the Insurance Carrier shall be bound by and subject to the orders, findings, decisions and awards rendered against the Employer for the payment of

## Plaintiff's Exhibit No. 19—(Continued)

compensation and medical benefits; and that the insolvency or bankruptcy of the Employer and his discharge therein shall not relieve the Insurance Carrier from the payment of compensation and medical benefits for injuries or death sustained by an employee during the life of this policy.

## Rights of Employees

Employees of the employer, insured under this policy, or their dependents in case death results, shall have the right to enforce in their own names, either by filing a separate claim or by making the insurance carrier a party to the original claim, the liability of the Insurance Carrier in whole or in part, for the payment of compensation and accident benefits—except where exclusive jurisdiction is vested in the Arizona Industrial Commission or the State under the provisions of the Workmen's Compensation Law—provided, however, that payment in whole or in part of such compensation and accident benefits by either the employer or Insurance Carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

## Extent of Liability

This policy covers the entire liability of the Employer to his employees or their dependents under the Workmen's Compensation Law for all business operations at or from the location set forth in the declarations and work of employees away from said locations which is necessary, incident to, or connected with such described business operations conducted at the location so named. This Policy Does

## Plaintiff's Exhibit No. 19—(Continued)

Not Cover the Persons Specifically Excluded from Coverage Under the Policy as Hereinafter Set Forth or Different Kinds of Business Operations Not Described in the Declarations. (Coverage for Additional Kinds of Business Operations May Be Secured by a Formal Written Endorsement to This Policy.)

## Indemnity to Employer

And Further Agrees: To indemnify the Employer against loss imposed by law for damages, and to defend, in the name and on behalf of the Employer, claims or suits for such damages, and pay all costs of such defense, provided such injury or death is the result of an injury by accident arising out of and in the course of the employment, and is not purposely self-inflicted, and Provided Such Employee Is Covered by This Policy During the Life Hereof, and provided that such liability for damages is imposed on the Employer by the Workmen's Compensation Law.

## Payment of Premium

Unless Otherwise Endorsed on This Policy, the Advance Premium Shall Be Maintained at an Amount Sufficient to Cover at Least Six Months Premium and Shall Be Retained Until the Final Adjustment of Premium Is Made.

## Right of Examination

Any member of The Industrial Commission of Arizona or any authorized representative thereof

## Plaintiff's Exhibit No. 19—(Continued)

shall have the right and opportunity at all reasonable times until final adjustment of premium for this policy shall have been made, to examine and audit the employers books and records so far as they relate to the remuneration earned by all persons in the service of the employer subject to the provisions of the Workmen's Compensation Law, including contractors, sub-contractors and their employees and the proper payroll classifications therefor. If it shall be ascertained that the total premium paid by the employer, excluding the advance premium, is less than the amount which is properly chargeable to the employer for the period subject to adjustment, the employer shall immediately pay the difference between the total premium paid and the ascertained premium. If the total premium paid by the employer, excluding the advance premium, is in excess of the ascertained premium for the period subject to adjustment, the amount of such excess shall be refunded to the employer, except that such refund shall in no event reduce the premium paid below the Minimum Annual Premium for this policy.

## Adjustment of Premium

Adjustment of premium shall be made at such time as The Industrial Commission of Arizona shall require.

No refund of premium shall be payable until the actual earnings of the employees covered by this policy during the period subject to adjustment shall have been ascertained by payroll audit.

## Plaintiff's Exhibit No. 19—(Continued)

## Revision of Rates

The employer agrees to accept any reductions or any increases in the rate or rates per \$100.00 of earnings which may be promulgated by The Industrial Commission of Arizona and made effective while this policy remains in force.

The effective date of any such reduction or increase shall be determined by The Industrial Commission of Arizona.

## Experience and Hazard Rating

Unless otherwise specified by endorsement hereon, the employer agrees to accept and abide by any experience rating plan and/or hazard rating schedule adopted and published by The Industrial Commission of Arizona; and the employer agrees to accept any increase or reduction in the rate or rates required by the application of such experience rating plan and/or hazard rating schedule and further agrees that the effective date of such changes shall be fixed by The Industrial Commission of Arizona.

Notice to Be Served on The Industrial  
Commission

Written notice of any injury or death of any employee covered by this policy, or of any claim resulting therefrom, and every notice and process served upon the employer in respect thereto, must be forwarded immediately to The Industrial Commission of Arizona at Phoenix, Arizona.

The Insurance Carrier shall not be chargeable with any settlement or expense incurred by the employer without the consent of a member or

Plaintiff's Exhibit No. 19—(Continued)  
authorized representative of The Industrial Commission of Arizona.

#### Transfer of Policy

The employer or his, or its, heirs, successors or assigns, shall immediately notify the Insurance Carrier, and The Industrial Commission of Arizona, of any transfer of his, or its, ownership in the business covered by this policy.

#### Cancellation

This policy may be cancelled at any time by the employer when not in arrears for premiums upon written notice served upon The Industrial Commission of Arizona stating that five days after service of said written notice cancellation shall be effective provided said notice shall be accompanied by this policy for cancellation and satisfactory proof that the employer has complied with one or the other alternative methods of securing compensation to his, or its, employees, as prescribed by the Workmen's Compensation Law; this policy shall, however, be subject to cancellation at any time by The Industrial Commission of Arizona; and provided further that no refund shall reduce the premium to be retained below the minimum annual premium for this policy. The registration and deposit in the United States Mails of a cancellation notice addressed to the last known address of the employer as shown by the records of The Industrial Commission of Arizona, signed by a member or authorized representative of the Commission shall be deemed to constitute for

## Plaintiff's Exhibit No. 19—(Continued)

this purpose actual delivery of such notice to the employer.

## Policy Not Assignable

No assignment of interest under this policy shall bind the Insurance Carrier or constitute a claim on the State Compensation Fund.

## Change in Policy

No condition or provision of this policy shall be waived or altered except in writing, or by endorsement hereon, signed by a member of The Industrial Commission of Arizona or a duly authorized representative thereof; or shall notice to any member of The Industrial Commission of Arizona or to any representative thereof, nor shall knowledge possessed by any such person or by any other person be held to effect a waiver or change in any part of this policy. If the employer carries any other insurance covering a claim covered by this policy, he shall not recover from the Insurance Carrier a larger proportion of any such claim, than the sum hereby insured bears to the whole amount of valid and collectible insurance.

This Policy Does Not Cover the Following Unless  
Provided by Endorsement Hereon:

## Coverage and Exclusions

(1) Any person performing work or accustomed to performing work for the employer without remuneration.

(2) A person engaged in work for the employer who, while so engaged, is independent of the em-



Plaintiff's Exhibit No. 19—(Continued)

ployer in the execution of the work, not subject to the rule or control of the employer, but engaged only in the performance of a definite job or piece of work and subordinate to the employer only in effecting a result in accordance with the employers design.

(3) Agricultural Workers not employed in the use of machinery.

(4) Domestic Servants.

(5) A person whose employment is casual and is not in the usual course of trade, business or occupation of the employer.

(6) Employees who have rejected the terms, conditions and provisions of the Workmen's Compensation Law.

Election

The acceptance of this policy by the employer shall serve as an election on the part of the employer to secure compensation to his, or its, employees as regards all persons whose earnings are required to be reported By the Terms of This Policy under the provisions of Sub-Section 1, Section 56-932 Arizona Code Annotated 1939.

Subrogation

In consideration of the issuance of this policy the employer hereby vests in and grants to the Insurance Carrier irrevocably during the continuance of this policy full power and authority in the employer's name, place and stead, to make all investigations

Plaintiff's Exhibit No. 19—(Continued)

alter, vary or extend any of the stipulations, agreements or limitations of this policy, other than as above stated.

This endorsement, issued by The Industrial Commission of Arizona, when countersigned by a duly authorized officer or representative of the Commission and attached to Policy 10495 issued to Basich Brothers Construction Co. of Alhambra, California shall be valid, and form a part of the policy.

Effective Date: October 3, 1943.

/s/ RAY GILBERT

Chairman

/s/ L. C. HOLMES.

Commissioner

/s/ C. EARL ROGERS

Commissioner

/s/ EARL G. ROOKS

/s/ FRED E. EDWARDS

Countersigned at Phoenix, Arizona Nov. 2, 1943.

/s/ BYRON F. HUNTER,

Authorized Representative

The Industrial Commission of Arizona  
Phoenix, Arizona

Endorsement—Effective from 12:01 A.M., October 1, 1943. Amending Policy No. 10495. Issued to: Basich Brothers Construction Co., Torrance, California

Plaintiff's Exhibit No. 19—(Continued)

Anything in this policy to the contrary notwithstanding, it is understood and agreed that as of the effective date hereof Mileage Endorsement attached to this policy providing for percentage increase in the basic rates where the distance of the Employer's operations is five miles or more from the nearest licensed surgical practitioner Is Hereby Declared Null and Void.

Nothing herein contained shall be held to waive, alter, vary or extend any of the stipulations, agreements or limitations of this policy, other than as above stated.

/s/ RAY GILBERT  
Chairman

/s/ EARL G. ROOKS  
Member

/s/ FRED E. EDWARDS  
Member

Countersigned at Phoenix, Arizona, Oct. 1, 1943.

/s/ BYRON F. HUNTER,  
Authorized Representative

Plaintiff's Exhibit No. 19—(Continued)

The Industrial Commission of Arizona  
Phoenix, Arizona

Endorsement

Anything in this policy to the contrary notwithstanding, it is understood and agreed that effective 12:01 A.M. August 27, 1943, such coverage as is afforded under the terms of this policy is extended to include the operations of the Assured in the construction of roads, Job No. Navajo Ordnance Depot P (5-1) Bellemont, Arizona, Contract No. W 509-Eng. 5529.

Nothing herein contained shall be held to waive, alter, vary or extend any of the stipulations, agreements or limitations of this policy, other than as above stated.

This endorsement, issued by The Industrial Commission of Arizona, when countersigned by a duly authorized officer or representative of the Commission and attached to Policy 10495 issued to Basich Brothers Construction Co. of Alhambra, California shall be valid, and form a part of the policy.

/s/ RAY GILBERT

Chairman

/s/ L. C. HOLMES.

Commissioner

/s/ C. EARL ROGERS

Commissioner

/s/ EARL G. ROOKS

/s/ FRED E. EDWARDS

Countersigned at Phoenix, Arizona, Sep. 13, 1943.

/s/ BYRON F. HUNTER,

Authorized Representative

Plaintiff's Exhibit No. 19—(Continued)

Declaration

(Notice:—"Any Employer Who Misrepresents to the Commission the Amount of Payroll Upon Which the Premium to Be Paid to the Compensation Fund Is Based Shall Be Liable to the State in Ten Times the Amounts of the Difference in Premium Paid and the Amount the Employer Should Have Paid to Be Recovered by Civil Action in the Name of the State and Paid Into the Compensation Fund"). Section 56-977 Arizona Code Annotated 1939.

- 1. Name of Employer: Basich Brothers Construction Co.
- 2. P. O. Address: 20530 S. Normandie Ave., Torrance, Calif. Policy No. 10495.
- 3. The business name of the Employer is: Same as above.
- 4. The Employer is a Corporation.  
\* \* \*
- 6. The full names, addresses and titles of the officers of the corporation are:

Name and Address	Salaries
R. L. Basich, President, 1670 Oak Knoll Ave., San Marino.....	\$20,000.00
N. L. Basich, Treasurer, 3490 San Pasqual, Pasadena .....	20,000.00
Jesse S. Smith, 1st Vice-Pres., 444 E. Ross St., Glendale .....	12,000.00
George W. Kovick, 2nd Vice-Pres., 145 W. Shields Ave., Fresno.....	11,400.00
George J. Popovich, Secretary, 2818 Cincinnati St., Los Angeles.....	10,800.00

If a corporation, state name and address of statutory agent. (All officers reside in California)

## Plaintiff's Exhibit No. 19—(Continued)

7. The locations of all plants and work places covered by this policy, and the distance each is from the nearest surgical practitioner are as follows: Army Air Forces Advanced Flying School Yuma, Arizona.
8. The principal products manufactured, handled or sold are: Engaged in the General Construction Industry—no products manufactured.
9. State in the schedule below a description of the work engaged in, the estimated semi-annual payroll, including bonuses, commission, board, lodging and every other form of remuneration. If more than one kind of employment, give estimate of payroll applicable to each:

Plaintiff's Exhibit No. 19—(Continued)

Schedule

Classifi- cation No.	Principal Work of Insured	Esti- mated Semi- Annual Earn- ings of Em- ployees	Rate Per \$100 of Earnings
9079	Restaurants—including musicians, entertainers or Clerical Office Employees N.P.D. ....		\$1.30
1710	Stone Crushing—no quarrying—including construction, repair, or maintenance of all buildings, structures or equipment; installation of machinery—N.P.D.....	If Any	9.87
5506	Surfacing & Paving Airfields, (rated as)	If Any	5.47
6041	Clearing & Grading Airfields (rated as)	If Any	3.93
6229	Irrigation or Drainage System Construction.—(Pile driving, dredging, guniting, tunneling or dam or sewer construction to be separately rated).....	If Any	6.85
9800	Carpentry—in the construction of military cantonments—including installation of interior trim, builders' finish or cabinet work .....	If Any	3.80
Supplemental Building Schedule Attached			
8810	Clerical office employees.....	If Any	.084
			Total Advance Premium..... \$6,000.00

The minimum premium for this policy, which premium shall cover a period of not more than one year following date of inception of this policy is \$170.00.

In the event employees are required to travel, state the nature and extent thereof; and if board and lodging furnished, so note: We are operat-

Plaintiff's Exhibit No. 19—(Continued)

ing our own commissary on the project; both board and lodging furnished to employees for minimum charge.

10. The estimated payroll as stated above includes the remuneration earned by all persons employed in the service of the employer in connection with employer's business to whom remuneration of any nature in consideration of service is paid, allowed or due.
11. If there shall be any change in or extension of the employer's business or admission of any partners, it shall be immediately reported to The Industrial Commission, and the additional premium, if any, paid forthwith.
12. The following are the Only contractors or lessees of mining property doing or engaged in the performance of work which is a part or process in the trade or business conducted by employer over whose work employer retains supervision or control; and also following are the Only sub-contractors of such contractors or lessees.

No Sub-Contractors employed at present.

13. The following are the Only persons engaged in work for employer and who while so engaged are independent of employer in the execution of such work, not subject to the rule or control of employer but engaged Only in the performance of a definite job or piece of work and subordinate to employer Only in effecting a result in



Plaintiff's Exhibit No. 19—(Continued)  
connection with the employer's design, who are not covered by this policy: None.

If the contract is in writing, attach copy. If the contract is oral, state the terms and substance thereof. The employer agrees that the insurance carrier may, at any time, examine the records of the employer in order to ascertain the effect of any contract involving services rendered to the employer within the meaning of the compensation law.

(If, at any time in the future, employer desires coverage for such persons described in declaration No. 13, advise The Industrial Commission by wire and coverage will be effective upon confirmation by The Industrial Commission. In the event employees of contractors or lessees are not covered by this policy, employer should, for his own protection, ascertain that such contractor or lessee has and maintains a policy protecting him against liability to his employees.)

14. The following are the only repairs or maintenance work or new construction work to be done by employees or by contractors covered by this policy: Constructing addition parking apron, Job No. Yuma A (5-3) at Army Air Forces Advanced Flying School, Yuma, Arizona.

(Employer may extend the coverage of the policy to include such above work by notifying the Commission by wire and securing confirmation of such request.)

Plaintiff's Exhibit No. 19—(Continued)

15. An employer should not confuse his liability for compensation and his liability for damages. Coverage without limit against liability for compensation imposed by the Compensation Law (as regards employees covered) is provided by your policy, however, an employer may be liable for damages notwithstanding the issuance of a policy insuring him against liability for compensation, in case he fails to post and keep posted, as provided by law, in a conspicuous place on his premises, available for inspection by his employees, and in all the languages spoken by his employees, a certain notice informing his employees that he has complied with the law and with all the rules and regulations of the Commission, and also informing them that the employer has on hand blanks which any employee may fill out if he elects to reject the terms of the Workmen's Compensation Law. Liability for damages may also be enforced if the employer fails to keep on hand at the place where the employees are hired, as provided by law, a supply of the above-mentioned blanks. The liability for damages may also be enforced against an employer if injury or death is caused by the employer's wilfull misconduct and such misconduct indicates a willful disregard for the life, limb, or bodily safety of the employees, or where he has minors unlawfully employed.

Plaintiff's Exhibit No. 19—(Continued)

Coverage, within limits of \$10,000 for each employee injured or killed and subject to the same limit for each employee, a limit of \$20,000 by reason of an accident involving the injury or death of more than one employee is provided for.

In addition to your compensation insurance, do you desire insurance above said limits against such liability for damages for personal injury to your employees under the common law, the Arizona Employer's Liability Law or other statutes? Yes..... No.....

(For other limits and other cost write the Commission.)

16. This insurance shall take effect on the 2nd day of July, 1943 at 12:01 A.M. Standard Time.
17. Premiums on insurance coverage on all employees whose earnings are in excess of \$500.00 per month will be in excess of the manual rates and will be determined in accordance with the rules and regulations of The Industrial Commission of Arizona.
18. This policy is a continuous policy and does not expire except upon cancellation by either the employer or The Industrial Commission of Arizona as hereinbefore provided.
19. Remarks: Monthly payrolls to be submitted.
20. This Insurance is for Workmen's Compensation Insurance and/or Occupational Disease Disability Insurance and the information submitted herewith is intended to apply jointly or sever-

Plaintiff's Exhibit No. 19—(Continued)  
 ally as applicable to both or either of the Acts  
 governing above Insurance Policies.

Sign here.....Employer

By.....

Date.....

In Witness Whereof, The Industrial Commission  
 of Arizona has caused this policy to be signed by the  
 members thereof, but the same shall not be binding  
 unless countersigned by a duly authorized officer or  
 representative of the Commission.

/s/ RAY GILBERT

Chairman

/s/ FRED E. EDWARDS

/s/ L. C. HOLMES

Commissioner

/s/ C. EARL ROGERS

Commissioner

/s/ EARL G. ROOKS

Countersigned at Phoenix, Arizona, the 20th day  
 of July, 1943 at 12:01 A.M. Standard Time.

/s/ BYRON F. HUNTER, HFH

Authorized Representative

Plaintiff's Exhibit No. 19—(Continued)

Supplemental Schedule

Code No.	Classification	Esti- mated Semi- Annual Earn- ings of Em- ployees	Rate Per \$100 of Earn- ings
5645	Carpentry—all carpentry, incident to the construction of private residences for one or two families and dwellings of not exceeding three stories in height, including private garage connected therewith .....	If Any	\$3.80
5645	Carpentry—installation of interior trim, builders' finish and cabinet work only, incident to the construction of private or public buildings .....	If Any	3.80
5403	Carpentry—(Not Otherwise Classified)..	If Any	9.50
5610	Cleaners—engaged in the removal of debris in connection with new building construction—No Payroll Division if the work of the assured at a specific job or location is covered by a single construction or erection classification.....	If Any	4.30
5502	Concrete Construction — Floors, Sidewalk, Cellar Floors or Driveways—not reinforced—including calking or the installation or repair of light prisms—No Payroll Division with 5213—"Concrete Construction—Not Otherwise Classified" and 5203 — "Concrete Construction—Bridges or Culverts.".....	If Any	2.41

## Plaintiff's Exhibit No. 19—(Continued)

5213	Concrete Construction—(Not Otherwise Classified) — including foundations, or the making, setting up or taking down forms, scaffolds, or the making, setting up or taking down forms, scaffolds, false work or concrete distributing apparatus—No Payroll Division with 5203—“Concrete Construction — Bridges or Culverts”; or 5506 or 5507 “Street or Road Construction.”—(Excavation; pile driving; all work in sewers, tunnels, subways, caissons or coffer-dams to be separately rated). .....	If Any	9.00
5103	Door, Door Frame or Sash Erection or Repair—metal or metal covered.....	If Any	4.12
5190	Electrical Wiring — within buildings— including installation or repair of fixtures or appliances.—(Installation of electrical machinery or auxiliary apparatus to be separately rated). .....	If Any	3.00
5649	Excavation—for cellars or foundations in connection with private residences or dwellings, excluding mass rock excavation. ....	If Any	4.18
6219	Excavation—for cellars or foundations of buildings, bridges, retaining walls or dams—excluding mass rock excavation, pile driving, shaft sinking, caisson or coffer-dam work. ....	If Any	7.22
5646	Masonry—all masonry, adobe, concrete, or stucco work incident to the construction of private residences for one or two families and dwellings of wood construction not exceeding three stories in height, including private garages connected therewith. ....	If Any	5.91
5022	Masonry—(Not Otherwise Classified.)....	If Any	5.91

Plaintiff's Exhibit No. 19—(Continued)

5474	Painting, Decorating or Paper Hanging—Not Otherwise Classified)—including shop operations — (Painting steel structures or bridges to be separately rated). .....	If Any	5.60
5443	Lathing—metal or wood.....	If Any	4.30
5480	Plastering—(Not Otherwise Classified).	If Any	3.78
5183	Plumbing—Not Otherwise Classified—gas, steam, hot water or other pipe fittings—including house connections with incidental excavation; shop operations.—(Automatic sprinkler installation to be separately rated). .....	If Any	2.54
5551	Roofing—all kinds—including yard employees. ....	If Any	10.35
6306	Sewer Construction—all operations—including tunneling at street crossings when not performed under air pressure.—(All other tunneling to be separately rated). .....	If Any	10.61
5538	Sheet Metal Work—Erection, Installation or Repair (Not Otherwise Classified)—shop and outside—galvanized iron, sheet iron, corrugated iron, tin or copper.—(Roofing to be separately rated)...	If Any	4.80
	Total Advance Premium.....		

The Industrial Commission of Arizona  
Phoenix, Arizona

Endorsement

Anything in this policy to the contrary notwithstanding, it is understood and agreed that additional coverage within limits of \$100,000.00 for each employee injured or killed, and subject to the same limit for each employee, a limit of \$300,000.00 by reason of an accident involving the injury or death

## Plaintiff's Exhibit No. 19—(Continued)

5213	Concrete Construction—(Not Otherwise Classified) — including foundations, or the making, setting up or taking down forms, scaffolds, or the making, setting up or taking down forms, scaffolds, false work or concrete distributing apparatus—No Payroll Division with 5203—“Concrete Construction—Bridges or Culverts”; or 5506 or 5507 “Street or Road Construction.”—(Excavation; pile driving; all work in sewers, tunnels, subways, caissons or coffer-dams to be separately rated). .....	If Any	9.00
5103	Door, Door Frame or Sash Erection or Repair—metal or metal covered.....	If Any	4.12
5190	Electrical Wiring — within buildings— including installation or repair of fixtures or appliances.—(Installation of electrical machinery or auxiliary apparatus to be separately rated). .....	If Any	3.00
5649	Excavation—for cellars or foundations in connection with private residences or dwellings, excluding mass rock excavation. ....	If Any	4.18
6219	Excavation—for cellars or foundations of buildings, bridges, retaining walls or dams—excluding mass rock excavation, pile driving, shaft sinking, caisson or coffer-dam work. ....	If Any	7.22
5646	Masonry—all masonry, adobe, concrete, or stucco work incident to the construction of private residences for one or two families and dwellings of wood construction not exceeding three stories in height, including private garages connected therewith. ....	If Any	5.91
5022	Masonry—(Not Otherwise Classified.)....	If Any	5.91



Plaintiff's Exhibit No. 19—(Continued)

5474	Painting, Decorating or Paper Hanging—Not Otherwise Classified—including shop operations—(Painting steel structures or bridges to be separately rated). .....	If Any	5.60
5443	Lathing—metal or wood.....	If Any	4.30
5480	Plastering—(Not Otherwise Classified).	If Any	3.78
5183	Plumbing—Not Otherwise Classified—gas, steam, hot water or other pipe fittings—including house connections with incidental excavation; shop operations.—(Automatic sprinkler installation to be separately rated). .....	If Any	2.54
5551	Roofing—all kinds—including yard employees. ....	If Any	10.35
6306	Sewer Construction—all operations—including tunneling at street crossings when not performed under air pressure.—(All other tunneling to be separately rated). .....	If Any	10.61
5538	Sheet Metal Work—Erection, Installation or Repair (Not Otherwise Classified)—shop and outside—galvanized iron, sheet iron, corrugated iron, tin or copper.—(Roofing to be separately rated)...	If Any	4.80
	Total Advance Premium.....		

The Industrial Commission of Arizona  
Phoenix, Arizona

Endorsement

Anything in this policy to the contrary notwithstanding, it is understood and agreed that additional coverage within limits of \$100,000.00 for each employee injured or killed, and subject to the same limit for each employee, a limit of \$300,000.00 by reason of an accident involving the injury or death

Plaintiff's Exhibit No. 19—(Continued)  
of more than one employee, is provided for all liabilities covered in item 15 of the declaration.

In consideration therefor, it is further understood and agreed that during the time this endorsement is in effect, there shall be added to the rate or rates of premium otherwise applicable to the policy Twenty-Seven (27%) per cent of the fund rate for each classification.

Nothing herein contained shall be held to waive, alter, vary or extend any of the stipulations, agreements or limitations of this policy, other than as above stated.

This endorsement, issued by The Industrial Commission of Arizona, when countersigned by a duly authorized officer or representative of the Commission and attached to Policy 10495 issued to Basich Brothers Construction Co. of Torrance, Cal. shall be valid, and form a part of the policy.

Effective Date: 12:01 A.M. July 2, 1943.

/s/ RAY GILBERT

Chairman

/s/ FRED E. EDWARDS

/s/ L. C. HOLMES

Commissioner

/s/ C. EARL ROGERS

Commissioner

/s/ EARL G. ROOKS

Countersigned at Phoenix, Arizona, July 20, 1943.

/s/ BYRON F. HUNTER AJ

Authorized Representative

Plaintiff's Exhibit No. 19—(Continued)

The Industrial Commission of Arizona  
Phoenix, Arizona

Arizona Occupational Disease Disability Law Endorsement. (To Provide Occupational Disease Coverage to Existing Workmen's Compensation Insurance Policies.)

1. Anything in this policy to the contrary notwithstanding, it is understood and agreed that effective 12:01 A.M. July 2, 1943 the obligations of the policy to which this endorsement is attached and made a part thereof shall apply to the Arizona Occupational Disease Disability Law herein cited:

Chapter 26, House Bill 25, Laws 16th Legislature. Regular Session (1943) State of Arizona, known and cited as "Arizona Occupational Disease Disability Law" and all laws amendatory thereof which may become effective while this policy is in force, hereinafter referred to as "this Act."

2. Insurance afforded under this policy in its application to this Act is separate and distinct from, and may be cancelled independently of any insurance which may be afforded under the Workmen's Compensation Law of Arizona. Such independent cancellation may be effected by cancellation of this endorsement in the same manner that the policy in its entirety may be cancelled.

3. In the application of insurance with respect to this Act, wherever they occur in the policy of insurance, the words following:

Plaintiff's Exhibit No. 19—(Continued)

(a) "Injury," "injuries" and "injury by accident" wherever used in this policy, mean disability or death from an occupational disease under this Act and does not mean injury or death by accident; and

(b) "Compensation Law," "Workmen's Compensation Law" and "Chapter 56, Article 9, Arizona Code Annotated, 1939, and amendments thereto known as Workmen's Compensation Law" mean this Act, and "Sub-Section 1, Section 56-932 Arizona Code Annotated 1939" means Section 16 of this Act; and "Section 56-977 Arizona Code Annotated 1939" means Section 30 of this Act; and

(c) "State Compensation Fund" and "Compensation Fund" mean The State Occupational Disease Compensation Fund; and

(d) "Accident Benefits" mean medical service, hospitalization and medicines to which a disabled employee is entitled under this Act; and

(e) "Compensation" means the benefits prescribed by Section 15 of the Arizona Occupational Disease Disability Law.

4. In the application of insurance to this Act:

(a) Item 13 of the Declaration and lines 115 to 118, inclusive, of the policy are amended to provide coverage under this Act, for all subcontractors and their employees who employ less than three employees during such time as the

subcontractor is engaged in the performance of work under subcontract with the Employer.

(b) Line 119 of the policy is amended to read, “(3) Agricultural Workers.”

(c) Item 17 of the Declaration of the policy is eliminated.

5. Item 15 of the Declaration of the policy referring to damage liability is applicable insofar as the same applies to this Act; and in addition to coverage against liability for compensation imposed by the Arizona Occupational Disease Disability Law (as regards employees covered) coverage for damage assessed by law under the provisions of Section 49, 58 and 60 of this Act, is provided with limits of \$5,000.00 on account of occupational disease, including death at any time resulting therefrom, sustained by any one employee, and subject to such limit with respect to each such employee, to \$20,000.00 on account of occupational disease, including death at any time, resulting therefrom, sustained by all employees during one calendar year.

6. The Employer shall pay the premium specified in the Endorsement in addition to the premium specified elsewhere in the policy on the basis of the classifications and rates stated in the schedule below. The premium determined in accordance with the provisions of this Endorsement is subject otherwise to all the terms of the policy, excepting standard “Salary Endorsement” and “Mileage Endorsement” which are or may be attached to this policy, and which have no application to rates under this Act.

## Plaintiff's Exhibit No. 19—(Continued)

## Schedule

Note: For complete statement of Classification Wording and Estimated Semi-Annual Pay-roll refer to Policy Declaration.

Code Number for Classification of Work	Rate Per \$100 of Payroll
1710	\$0.17
5506	0.02
6041	0.02
6229	0.02
8810	0.01

Minimum Premium \$3.00

Estimated Advance Deposit To be billed.

7. Nothing herein contained shall be held to waive, alter, vary or extend any of the stipulations, agreements or limitations of this policy other than as above stated.

8. This endorsement issued by The Industrial Commission of Arizona, when countersigned by a duly authorized officer or representative of the Commission and attached to Policy 10495 issued to Basich Brothers Construction Co. of Torrance, California shall be valid, and form a part of the policy.

/s/ RAY GILBERT

Chairman

/s/ EARL G. ROOKS

Commissioner

/s/ FRED E. EDWARDS

Commissioner

Countersigned at Phoenix, Arizona, July 20, 1943.

/s/ BYRON F. HUNTER EN

Authorized Representative

Plaintiff's Exhibit No. 19—(Continued)

The Industrial Commission of Arizona  
Phoenix, Arizona

Endorsement

Anything in this policy to the contrary notwithstanding, it is understood and agreed that the rate of premium applicable to the payroll of any employee covered by this policy and receiving in excess of \$500.00 monthly, shall be determined by multiplying the rates otherwise applicable to the class of work performed by such employee by the figures shown in the following schedule, and the resultant rate shall apply to the entire payroll of such employee:

Monthly Rate of Pay	(Pencil Notation)	Multiply Rate Other- wise Applicable by Figure Below:
\$ 500.00 to \$ 599.00—Basic rate only	× 1.25	1.25
600.00 to 699.00—Basic rate only		1.51
700.00 to 799.00—Basic rate only		1.89
800.00 to 949.00—Basic rate only		2.21
950.00 to 1199.00—Basic rate only		2.68
1200.00 to 1499.00—Basic rate only		3.24
1500.00 to 1999.00—Basic rate only		4.92
2000.00 and over—Basic rate only		6.31

Nothing herein contained shall be held to waive, alter, vary or extend any of the stipulations, agreements or limitations of this policy, other than as above stated.

## Plaintiff's Exhibit No. 19—(Continued)

This endorsement, issued by The Industrial Commission of Arizona, when countersigned by a duly authorized officer or representative of the Commission and attached to Policy No. 10495 issued to Basich Brothers Construction Co. of Torrance, Cal. shall be valid, and form a part of the policy.

Date Effective: July 2, 1943.

/s/ RAY GILBERT

Chairman

/s/ FRED E. EDWARDS

/s/ L. C. HOLMES

Commissioner

/s/ C. EARL ROGERS

Commissioner

/s/ EARL G. ROOKS

Countersigned at Phoenix, Arizona, July 20, 1943.

/s/ BYRON F. HUNTER EN

Authorized Representative



## Plaintiff's Exhibit No. 19—(Continued)

The Industrial Commission of Arizona  
Phoenix, Arizona

## Endorsement

The schedule of rates otherwise applicable to this policy shall be increased in accordance with the following schedule:

Distance from Nearest Licensed Surgical Practitioner:						Increase in Basic Rates:	
5 to	10 miles	(not including	10 miles)			5%	
10 to	15	“	“	“	15	“	10%
15 to	20	“	“	“	20	“	15%
20 to	30	“	“	“	30	“	20%
30 to	50	“	“	“	50	“	25%
50 to	75	“	“	“	75	“	30%
75 to	100	“	“	“	100	“	35%
100 to	125	“	“	“	125	“	40%
125 to	150	“	“	“	150	“	45%
150 to	200	“	“	“	200	“	50%

Nothing herein contained shall be held to waive, alter, vary or extend any of the stipulations, agreements or limitations of this policy, other than as above stated.

This endorsement, issued by The Industrial Commission of Arizona, when countersigned by a duly authorized officer or representative of the Commission and attached to Policy No. 10495 issued to

Plaintiff's Exhibit No. 19—(Continued)  
Basich Brothers Construction Co. of Torrance, Cal.  
shall be valid, and form a part of the policy.

Date Effective: July 2, 1943.

/s/ RAY GILBERT  
Chairman

/s/ FRED E. EDWARDS  
/s/ L. C. HOLMES  
Commissioner

/s/ C. EARL ROGERS  
Commissioner

/s/ EARL G. ROOKS

Countersigned at Phoenix, Arizona, July 20, 1943.

/s/ BYRON F. HUNTER EN  
Authorized Representative

[Endorsed]: U. S. D. C. Received in evidence  
Oct. 14, 1946.

PLAINTIFF'S EXHIBIT No. 20

Construction Contract, War Department. Form  
No. 2. Contract No. W-04-353-Eng.-1302.  
Original. Job No. 19 Tucson.

Contractor & Address:

Basich Brothers Construction Co.,  
P. O. Box 151,  
600 South Fremont, Avenue,  
Alhambra, California.

Contract for:

Taxiways, Warm-Up and Parking Aprons,  
Job No. Davis-Monthan ESA 210-6, 210-8 and  
210-9.

Approx. Amount:

\$942,816.00.

Location:

Davis-Monthan Field,  
Tucson, Arizona.

Payment: To be made by Finance Officer, United  
States Army, at 824 South Western Avenue,  
Los Angeles, California.

The supplies and services to be obtained by this  
instrument are authorized by, are for the purposes  
set forth in, and are chargeable to the following  
allotments, the available balances of which are suffi-  
cient to the cover the cost of the same.

212/50905 50-1327 P210-10 S-04-353.

This contract is authorized by the following laws: First War Powers Act, 1941, Act of 18 December 1941, (Public Law 354 - 77th Cong.), and Executive Order No. 9001, dated 27 December 1941.

This Contract, entered into this 25th day of January, 1945, by the United States of America (hereinafter called the Government) represented by the Contracting Officer executing this contract, and Basich Brothers Construction Co., a corporation organized and existing under the laws of the State of California of the city of Alhambra in the State of California (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

Article 1. Statement of work.—The contractor shall furnish the materials, and perform the work (except materials and equipment designated to be furnished by the Government) for constructing taxiways, warm-up and parking aprons, airfield lighting, drainage facilities, and water service lines, together with appurtenant facilities, Job No. Davis-Monthan ESA 210-6, 210-8 and 210-9, at Davis-Monthan Field, Tucson, Arizona, for the consideration of the schedule of payment hereto attached, and in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof and designated as follows: Invitation No. 45-79, dated 29 December 1944, Addendum No. 1, dated 4 January 1945, Addendum No. 2, dated 8 January 1945, Addendum No. 3, dated 12 January

1945, Addendum No. 4, dated 13 January 1945, Addendum No. 5, dated 17 January 1945, and drawings as listed therein. The work shall be commenced on or before 26 January 1945, and shall be completed in accordance with paragraph SC-13 of the specifications.

Article 17. Rate of Wages.—(In accordance with the act of August 30, 1935, 49 Stat. 1011, as amended by the act of June 15, 1940, 54 Stat. 399 (U. S. Code, title 40, secs. 276 a and 276a-1), this article shall apply if the contract is in excess of \$2,000 in amount and is for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia.)

(a) The contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less or more than those stated in the specifications (subject to Executive Order Number 9250 and the General Orders and Regulations issued thereunder) regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the contractor in a prominent and

easily accessible place at the site of the work. The contracting officer shall have the right to withhold from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) In the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(c) The regulations of the Secretary of Labor, referred to in article 19 hereof, allow certain "permissible deductions" from the wages required by this article to be paid.

Article 19. Nonrebate of Wages.—The contractor shall comply with the regulations of the Secretary of Labor pursuant to the Act of June 13, 1934, 48 Stat. 948 (U. S. Code, title 40, secs. 276b and 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

Article 25. Anti-Discrimination.—(a) The Contractor in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

(b) The Contractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the contractor with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this contract; provided, however, that a con-

tract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract.

In Witness Whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF  
AMERICA,

By /s/ O. H. OCHSNER,  
Lt. Col., Corps of Engineers,  
Contracting Officer.

BASICH BROTHERS CON-  
STRUCTION CO.,

By /s/ N. L. BASICH.  
P. O. Box 151, 800 South Fre-  
mont Avenue, Alhambra,  
California.

Two Witnesses:

DEEMI COULSON,  
617 S. La Paloma.

MILDRED GRIFFIN,  
525 S. La Paloma.



I, G. J. Popovich, certify that I am the Secretary of the corporation named as Contractor herein; that N. L. Basich, who signed this contract on behalf of the Contractor was then President of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In Witness Whereof, I have hereunto affixed my hand and the seal of said corporation this 19th day of February, 1945.

[Seal]     /s/ G. J. POPOVICH,  
Secretary.

War Department, United States Engineer Office,  
751 South Figueroa Street, Los Angeles, California

17 January 1945

Addendum No. 5

I. The Specifications. Invitation No. 45-79, dated 29 December 1944, covering "Taxiways, Warm-Up and Parking Aprons, Job No. Davis Monthan ESA 210-6, 210-8 and 210-9, at Davis-Monthan Field, Tucson, Arizona, Addendum No. 2 dated 8 January 1945, Addendum No. 3 dated 12 January 1945, and Addendum No. 4 dated 13 January 1945, and the drawings are further modified as follows:

Specifications

(52) Page 2, paragraph 2.

a. Subparagraph (b). To the subparagraph, add the following:

The minimum thickness of gravel base course under conforms shall be six (6) inches. Where base courses of less than 6-inch thickness are indicated on drawings or required, asphaltic binder course or courses shall be used; any indications or notes to the contrary on the drawings shall be disregarded.

b. Subparagraph (c) (2) c, line 1. Delete "replacement" and insert reinforcement.

(53) Page 3, subparagraph 3 (a), Schedule of Work Items.

a. Item 17. Delete "154,800" and insert 75,000.

b. Item 18. Delete "17,000" and insert 75,000.

(54) Pages S-10 and S-11, subparagraph SC-7 (a). After "1059/38", "1059/53," and "1059/54" insert Revision A 1/17/45.

(55) Page S-18, SC-13, line 2. Delete "ninety (90)" and insert one hundred and thirty (130).

(56) Page II-3, subparagraph 2-04 (d), lines 19 to 21, inclusive. Delete "not more \* \* \* sections," and insert the following:

of six (6) inches in thickness or less, as directed by the Contracting Officer, for the full width of the cross sections.

GC-7. Subcontractors. The Contractor shall within five (5) days, or within such time as determined by the Contracting Officer, after the date of this contract notify the Contracting Officer in writing of the names of all subcontractors proposed for the work, the extent of the work to be done by each, and the general terms and conditions of each proposed subcontract. If, for sufficient reason, at any

time during the progress of the work, the Contracting Officer determines that any subcontractor is incompetent or undesirable, he will notify the Contractor accordingly and immediate steps will be taken for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Government.

SC-4. Rates of Wages.

(a) The minimum wages to be paid laborers and mechanics on this project, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are as set forth below.

(b) Any class of laborers and mechanics not listed below employed on this contract shall be classified or reclassified conformably to the schedule set out below by mutual agreement between the contractor and class of labor concerned, subject to the prior approval of the Contracting Officer. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the Contracting Officer, shall be referred to the Secretary of Labor for final determination. The wages specified in this schedule shall be the maximum wages to be paid, subject, however, to Executive Order No. 9250 and the General Orders and Regulations issued thereunder.

## Pima County, Arizona

Classification of Laborers and Mechanics	Minimum Rates of Wages Per Hour
Adobe layers .....	\$1.65
Air tool operators (vibrators).....	.90
Air tool operators (jackhammermen).....	1.00
Asbestos workers .....	1.50
Asphalt rakers and ironers.....	1.10
Asphalt header boardmen .....	1.10
Blacksmiths .....	1.375
Blacksmiths' helpers .....	1.00
Boilermakers .....	1.50
Boilermakers' helpers .....	1.25
Bricklayers .....	1.65
Bricklayers' tenders .....	1.00
Carpenters, journeymen .....	1.35
Carpenter's apprentices:	
1st year .....	.75
2nd year .....	.875
3rd year .....	1.00
4th year .....	1.25
Calkers (sewer pipe) .....	1.125
Casters .....	1.95
Cement block layers .....	1.775
Cement finishers .....	1.375
Cement finishers' tenders .....	1.125
Cement finishing machine operators .....	1.50
Concrete road form setters .....	1.375
Curb, gutter, and sidewalk form setters.....	1.375
Distributor drivers .....	1.125
Distributor operators .....	1.125
Drillers, core, diamond .....	1.00
Drillers, wagon .....	1.00
Dumpmen and spotters .....	.90
Dumpter drivers, less than 7 cu. yd., w.l.e.....	1.125
Dumpter drivers, 7 cu. yd. or over w.l.e.....	1.25
Gunite groundmen .....	1.25
Gunite gunmen .....	1.00
Gunite nozzlemen .....	1.25
Gunite nozzlemen's helpers .....	.90
Gunite rodmen .....	1.25
Gunite mixermen .....	1.00

Classification of Laborers and Mechanics	Minimum Rates of Wages Per Hour
Electricians (wiremen and linemen).....	\$ 1.50
Electricians' apprentices:	
1st 6 months .....	.50
2nd 6 months.....	.625
3rd 6 months .....	.75
4th 6 months .....	.875
5th 6 months .....	1.00
6th 6 months .....	1.125
7th 6 months .....	1.25
8th 6 months .....	1.375
Elevator constructors .....	1.53
Elevator constructors' helpers .....	1.07
Fireproofers .....	1.65
Glaziers .....	1.25
Highway stoneworkers .....	1.25
Ironworkers, structural .....	1.50
Ironworkers, ornamental .....	1.50
Ironworkers, reinforcing .....	1.375
Laborers .....	.825
Laborers, concrete .....	.90
Lathers, metal .....	1.50
Lathers, wood .....	1.50
Machinists .....	1.375
Machinists' helpers .....	.975
Marble setters .....	1.65
Marble setters' helpers .....	.875
Millwrights .....	1.375
Miners (underground construction) .....	1.10
Mortar mixers .....	1.125
Mosaic workers .....	1.65
Mosaic workers' helpers .....	.875
Painters, brush .....	1.25
Painters, spray .....	1.625
Painters, structural steel .....	1.50
Pile drivermen .....	1.375
Pile drivermen (lead and hold men).....	1.375
Pipe layers, sewer .....	1.25
Pipe wrappers .....	1.25
Pipe wrappers' helpers.....	1.00
Plasterers .....	1.50

Classification of Laborers and Mechanics	Minimum Rates of Wages Per Hour
Plasterers' tenders .....	\$ 1.25
Plumbers .....	1.50
Plumbers' apprentices:	
1st 6 months 25% of journeymen's rate	
2nd 6 months 32% of journeymen's rate	
3rd 6 months 35% of journeymen's rate	
4th 6 months 40% of journeymen's rate	
5th 6 months 45% of journeymen's rate	
6th 6 months 50% of journeymen's rate	
7th 6 months 57.5% of journeymen's rate	
8th 6 months 65% of journeymen's rate	
9th 6 months 72.5% of journeymen's rate	
10th 6 months 80% of journeymen's rate	
Powdermen (blasters) .....	1.25
Power saws (sawyers) .....	1.50
Power equipment operators:	
Air compressors, stationary .....	1.25
Air compressors, portable-type.....	1.00
Apprentice engineers (oilers, firemen, greasers).....	.975
Apprentice engineers (tractors, less than 50 hp. with- out bulldozers, carry-alls, and similar attachments)	1.00
Asphalt or concrete spreading machines.....	1.25
Asphalt plant engineers or drier firemen.....	1.375
Asphalt plant mixers.....	1.375
Batch plants .....	1.25
Cableways .....	1.625
Carry-alls, tandem .....	1.625
Concrete mixers (paving-type).....	1.50
Concrete mixers (skip-type) .....	1.125
Concrete mixers (central).....	1.50
Cranes, derricks .....	1.50
Crushers .....	1.375
Distributors (bituminous surfaces).....	1.125
Hoists, material .....	1.375
Material loaders (conveyors).....	1.25
Mechanics (heavy duty repairmen).....	1.375
Motor graders .....	1.50
Overhead electric cranes .....	1.375
Pile drivers .....	1.50
Pull or tow graders .....	1.25

Classification of Laborers and Mechanics	Minimum Rates of Wages Per Hour
Pumps .....	\$ 1.00
Pumperetes .....	1.375
Road oil mixing machines .....	1.50
Rollers .....	1.25
Shovels, with any or all attachments.....	1.625
Statinary engineers .....	1.125
“Tourneau” pulls .....	1.625
Tractor, high lift shovel, 1 cu. yd. and over.....	1.50
Tractors, high lift shovel, less than 1 cu. yd.....	1.375
Tractors, 50 hp. and over with bulldozers, carry-alls, and similar attachments .....	1.50
Tractors, less than 50 hp. with bulldozers, carry-alls, and similar attacahments.....	1.25
Trenching machines, smaller than No. 224 “Buck- eye” .....	1.375
Trenching machines, No. 224 “Buckeye” or larger....	1.50
Well drillers and boring machines.....	1.25
Linoleum layers .....	1.375
Linoleum tile setters (rubber, mastic, etc.).....	1.50
Roofers .....	1.25
Roofers’ helpers .....	.875
Sandblasters (nozzlemen) .....	1.125
Sandblasters (pot tenders) .....	1.00
Sheet metal workers.....	1.25
Spreader boxmen .....	.925
Steam fitters .....	1.50
Steam fitters’ apprentices:	
1st 6 months 25% of journeymen’s rate	
2nd 6 months 32% of journeymen’s rate	
3rd 6 months 35% of journeymen’s rate	
4th 6 months 40% of journeymen’s rate	
5th 6 months 45% of journeymen’s rate	
6th 6 months 50% of journeymen’s rate	
7th 6 months 57.5% of journeymen’s rate	
8th 6 months 65% of journeymen’s rate	
9th 6 months 72.5% of journeymen’s rate	
10th 6 months 80% of journeymen’s rate	
Stone or granite cutters.....	1.25
Stonemasons .....	1.65
Stonemasons’ helpers .....	.875

Classification of Laborers and Mechanics	Minimum Rates of Wages Per Hour
Teamsters (2 or 4 up).....	\$ .95
Tank builders .....	1.50
Tank builders' helpers .....	1.25
Terrazzo workers .....	1.65
Terrazzo workers' helpers .....	.875
Tile setters .....	1.65
Tile setters' helpers .....	.875
Timbermen .....	1.125
Truck drivers, 13 cu. yd. and over.....	1.20
Truck drivers, 7 cu. yd., w.l.e. but less than 13 cu. yd...	1.125
Truck drivers, over 1½ tons m.r.e. and over 3 cu. yd., but less than 7 cu. yd. ....	1.00
Truck drivers, 1½ tons m.r.e. and 3 cu. yd. or less.....	.85
Truck drivers, oil and water tankers (2,250 gal. or less) .....	.925
Truck drivers, oil and water tankers (over 2,250 gal.) exclusive of trucks or trailers or semi-trailers.....	1.00
Truck drivers, transit mix, 4 cu. yd. or less.....	1.125
Truck drivers, on trucks and trailers or semi-trailers, under 9 tons pay load.....	1.00
Truck drivers, on truck and trailers or semi-trailers 9 tons pay load or over.....	1.125
Truck drivers, flat rack dump.....	.95
Truck drivers, lumber carriers .....	1.375
Truck servicemen (repairmen).....	.95
Welders—receive rate prescribed for craft performing operation to which welding is incidental.	

SC-5. Payments will be made semi-monthly in accordance with Article 16 of the contract.

SC-6. Bonds.

(a) Payment Bond. If the contract exceeds two thousand dollars (\$2,000.00), the contractor agrees to furnish a payment bond with good and sufficient surety or sureties acceptable to the Government for the protection of persons furnishing material or labor in connection with the performance of the work under this agreement on U. S. Standard Form No. 25-A or U. S. Standard Form



No. 25-C. The penal sum of such payment bond will be as follows: (1) When the contract price is one million dollars (\$1,000,000.00) or less, fifty per cent (50%) of the contract price; (2) When the contract price is in excess of one million dollars (\$1,000,000.00) and less than five million dollars (\$5,000,000.00) forty per cent (40%) of the contract price; (3) When the contract price is five million dollars (\$5,000,000.00) or more, two million five hundred thousand dollars (\$2,500,000.00).

(b) Performance Bond. If the contract price exceeds two thousand dollars (\$2,000.00), the contractor further agrees to furnish a performance bond with good and sufficient surety or sureties acceptable to the Government in connection with the performance of the work under this agreement on U. S. Standard Form No. 25 or U. S. Standard Form No. 25-B. The penal sum of such performance bond will be ten per cent (10%) of the contract price.

(c) Any bonds required hereunder will be dated as of the same date as the contract and will be furnished by the contractor to the Government at the time the contract is executed.

SC-13. Commencement and Completion of Work. The contractor will be required to commence work under this contract within one (1) calendar day after the date of the contract, to prosecute said work with faithfulness and energy, and to complete the entire work ready for use not later than ninety (90) days after commencement thereof. The time stated for completion shall include final clean-up of the premises.

## PLAINTIFF'S EXHIBIT No. 21

In the District Court of the United States for the  
Southern District of California, Central  
Division

No. 5021-PH

BASICH BROTHERS CONSTRUCTION COM-  
PANY, a Corporation,

Plaintiff,

vs.

GLENS FALLS INDEMNITY COMPANY, a  
Corporation, et al.,

Defendants.

## STIPULATION TO TAKE DEPOSITION

It Is Hereby Stipulated and Agreed by and between the respective parties to the above-entitled action, that the testimony of Nick L. Basich, a witness on the part of defendant Glens Falls Ind. Co., in such cause, be taken before C. W. McClain or other Notary Public in and for the County of Los Angeles, State of California, on Friday, the 21st day of June, 1946, commencing at the hour of 2:00 o'clock p.m., at Suite 1050, Petroleum Bldg., 714 West Olympic Blvd., Los Angeles, California, and, if not completed on said day, it may be continued from day to day thereafter until completed.

It is further stipulated that the testimony may be written down in shorthand by a shorthand reporter

Plaintiff's Exhibit No. 21—(Continued)

and thereafter written out in typewriting, and may be read and corrected by the witness, and may be signed and sworn to by the witness before any Notary Public, and that the said deposition and testimony, when so taken, may be read and used in evidence in said cause on any trial thereof or proceeding therein, subject to the same objections and exceptions as if said witness were personally present on the stand, but without objection or exception to the time, place, or manner of taking the same, or the form of the question, unless noted at the time. That said testimony may be taken pursuant to the provisions of Section . . . . . of the Code of Civil Procedure of the State of California.

Dated this 21st day of June, 1946.

STEPHEN MONTELEONE,  
Attorney for Plaintiff.

JOHN E. McCALL,  
Attorney for Defendant Glens  
Falls Indemnity Company.

Plaintiff's Exhibit No. 21—(Continued)

In the District Court of the United States for the  
Southern District of California, Central Division

No. 5021-PH

BASICH BROTHERS CONSTRUCTION COM-  
PANY, a Corporation,

Plaintiff,

vs.

GLENS FALLS INDEMNITY COMPANY, a  
Corporation, and ANDREW DUQUE and  
CARSON FRAZZINI, Co-partners, doing  
business under the name of DUQUE &  
FRAZZINI,

Defendants.

## DEPOSITION OF NICK L. BASICH

called as a witness on behalf of Defendant Glens Falls Indemnity Company, on Friday, June 21, 1946, at the hour of 2:00 o'clock p.m. of said day, in Suite 1050, Petroleum Building, 714 West Olympic Boulevard, Los Angeles, California, pursuant to Stipulation hereto annexed, before C. W. McClain, a Notary Public in and for the County of Los Angeles, State of California.

## Appearances:

Stephen Monteleone, Esq., for the plaintiff.

John E. McCall, Esq., for Defendant Glens Falls Indemnity Company.

Plaintiff's Exhibit No. 21—(Continued)

NICK L. BASICH

called as a witness on behalf of Defendant Glens Falls Indemnity Company, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCall:

Q. Mr. Basich, state your full name and address.

A. Nick L. Basich, 3490 San Pasqual Street, Pasadena.

Q. Have you ever given a deposition before?

A. Yes.

Mr. Monteleone: I have advised the witness of the nature of the deposition, Mr. McCall, and he has full knowledge of the purpose of it, and I think you can dispense with that part of it.

Mr. McCall: Thank you, Mr. Monteleone.

Q. (By Mr. McCall): Is the firm, Basich Brothers Construction Company, a corporation?

A. Yes.

Q. What position do you hold in the firm?

A. Right now, President.

Q. Were you President on or about January and February of 1945?      A. No.

Q. Who was President at that time?

A. R. L. Basich.

Q. When did you become President of the firm?

A. In March, 1945.

Q. Who is R. L. Basich—a brother of yours?

A. A brother.

Q. Where is he located?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. I don't know the exact address. 1670 Oak Knoll Avenue, San Marino. I think that is the right number.

Q. Where is his office?

A. 600 South Fremont Avenue, Alhambra.

Q. Is he an officer of the Basich Brothers Construction Company now?      A. Yes.

Q. What office does he hold now?

A. Treasurer and Vice President, both.

Q. What position did you hold with Basich Brothers Construction Company, a corporation, in February, the early part of February, 1945?

A. I was Treasurer and Vice President, both.

Q. You kind of switched jobs with your brother; is that right?

A. Well, there is more vice presidents than one.

Q. Then he is Vice President—

The Witness: Pardon me. This is not on the record now.

(There was a discussion off the record.)

Q. Then, Mr. Basich, what were your duties with reference to the construction work you carried on in February, 1945?      A. General Manager.

Q. And as President since then, you are still the General Manager?      A. Yes.

Q. On or about the 25th day of January, 1945, did you enter into a contract with the United States Government for the performance of some construction work at Davis-Monthan Field, near Tucson, Arizona?      A. Yes.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. Will you state the nature of the work covered by the contract?

Mr. Monteleone: Just a minute. I object to the question and instruct the witness not to answer. The contract speaks for itself, Mr. McCall, unless you want to know the general nature of the work.

Mr. McCall: All right. He can state the general nature of the work, if he wishes.

Mr. Monteleone: The contract is a very elaborate proposition, and covers various phases that the witness may not recall now, or be able to indicate correctly, and for that reason I will not permit the witness to answer the question, unless you want a general answer.

Mr. McCall: This is off the record here.

(There was a discussion off the record.)

Q. (By Mr. McCall): What I want you to give is the general nature of the work covered by the contract.

A. The nature of the work covered by our contract was the extension of a taxiway, runways, parking aprons, storm drains, drainage ditches, and small structures for drainage.

Q. Did Basich Brothers Construction Company sub-let a portion of the work you have mentioned to Duque & Frazzini, defendants in this action?

Mr. Monteleone: Wait a minute. I am going to object to the question as calling for a conclusion on the part of the witness, and instruct the witness

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

not to answer that question. If you ask him whether or not they entered into a contract with Duque & Frazzini in connection with certain materials to be used on that job, I have no objection. We are getting into a legal proposition, Mr. McCall.

Mr. McCall: Mr. Monteleone, the instrument that I referred to is called, in the body of the instrument, a subcontract, between Basich Brothers Construction Company and Duque & Frazzini. Do you object to that?

Mr. Monteleone: I will stipulate, for the purpose of the deposition, that Basich Brothers Construction Company entered into a contract with Duque & Frazzini, which is designated on the top of the contract as a "subcontract."

Mr. McCall: What is the date of that contract?

Mr. Monteleone: February 7th—

The Witness: I don't know the date of it off-hand.

Mr. Monteleone: It was February 7th—

The Witness: 1945.

Mr. Monteleone: 1945—that is right.

The Witness: You have got the date there, anyway.

Mr. Goodman: February 7, 1945.

Q. (By Mr. McCall): Is that your answer, Mr. Basich, February 7, 1945?

A. Well, whatever is in the contract.

Mr. Monteleone: I will stipulate that that is it.



Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. (By Mr. McCall): Then what was the nature of the work to be performed under the terms of the subcontract?

Mr. Monteleone: I object to that as calling for a conclusion of the witness. The contract speaks for itself and is the best evidence, unless you want a general answer, without going into any of the legal phases of the contract itself.

Mr. McCall: It is all right with me, just whatever answer you want to give, Mr. Monteleone. You may so instruct him, as to how far he can go in his answer.

Mr. Monteleone: I have made my objection.

A. We had a job there that required rock and sand, for the work, and that portion of the material was subbed to Duque & Frazzini.

Q. What is meant by the word "aggregate" used in the subcontract?

A. "Aggregate" means the stone and sand. That is the meaning of it. It could be gravel, wash gravel, out of the river, round, and it could be crushed. It could be any way, but it consists of rock and sand.

Q. As I understand it then, the aggregate consists of rock or gravel or sand or cement?

A. No. The cement isn't there, not as far as I know. Of course, I am no authority on it.

Q. Who prepared the subcontract between Basich Brothers Construction Company and Duque & Frazzini, if you know?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

Mr. Monteleone: You refer to the document designated as a "subcontract," Mr. McCall?

Mr. McCall: That is right, yes.

A. I don't know who did it. I think George Popovich or you (indicating Mr. Monteleone) did it.

Q. (By Mr. McCall): When and where did you sign it?

A. I believe it was in our office. I have no recollection of when I signed it, but I am satisfied it was in our office, because I was in our office at that time.

Q. Where is your office located?

A. 600 South Fremont, Alhambra.

Q. When and where did Duque or Frazzini sign it?

A. I don't know.

Q. Will you give a description, then, as to where the contract work of Duque & Frazzini was to be performed?

A. I didn't hear that.

Mr. McCall: Will you read it, please?

(The question was read by the reporter.)

A. In what location?

Q. That is right. A. What place?

Q. Yes.

A. At the property of Mr. Golub, approximately four miles from the air base.

Q. What direction from the air base?

A. I couldn't tell you that.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. And that was in Arizona? A. Yes.

Q. Near Tucson?

A. Eight miles from Tucson.

Mr. McCall: This is off the record.

(There was a discussion off the record.)

Q. Do you know personally whether Duque & Frazzini performed all the terms of their subcontract?

Mr. Monteleone: Just a minute. I object to the question as calling for a conclusion on the part of the witness, and I instruct the witness not to answer that question. You can refuse to answer that, Mr. Basich, under my instructions. That is for the Court to determine. Just refuse to answer it.

Mr. McCall: Then you refuse to let the witness give any answer on that?

Mr. Monteleone: I do, on that question, Mr. McCall. If you confine yourself to particulars, I have no objection, but to that general question I do.

Q. (By Mr. McCall): In what particular, if any, did Duque & Frazzini fail to perform the terms of their subcontract?

Mr. Monteleone: Again I am instructing the witness, objecting to the question, on the ground that it calls for a conclusion on the part of the witness, a conclusion of law, and instruct the witness not to answer that question. I have no objection to the witness testifying as to any particulars as to what Duque & Frazzini did or did not do.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Mr. McCall: That is all this question asks for.

Mr. Monteleone: All right. But don't ask a question that calls for a conclusion of law.

Mr. McCall: Will you read the question again, Mr. Reporter?

(The last question was read by the reporter.)

Mr. McCall: You are instructing the witness not to answer?

Mr. Monteleone: Not to answer that question?

Mr. McCall: On what ground?

Mr. Monteleone: On the ground that it calls for a conclusion of law.

Mr. McCall: I wasn't asking for the law. I was asking for facts.

Q. (By Mr. McCall): In what particular, if any?

Mr. Monteleone: I am still going to stand on that instruction. I have no objection to the witness testifying to what Duque & Frazzini did or did not do in connection with the prosecution of the work.

Q. (By Mr. McCall): How many superintendents did Basich Brothers Construction Company have on the prime contract job, if any?

A. One general superintendent.

Q. What was his name?

A. George Kovick.

Q. And, as general superintendent, what was his duty on the job?

A. Like all other general superintendents.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. In charge of the entire project?

A. In charge of the entire project.

Q. How many foreman, if any, did Basich Brothers Construction Company have on the prime contract job?

A. They had plenty of them. I don't know off-hand.

Q. Could you give the names of any of them?

A. Really, I don't know, except they were practically all new ones, except a few old ones that I had. If you want to know a couple of names that I know—

Q. Just give the names of those you know.

A. One of them is Jim Kucinar. Another one is John Hasich.

Q. Now, did Duque & Frazzini use only their own machinery and equipment on the job, or did they use also some of your machinery and equipment?

A. Yes; they used our crushing plant, and odds and ends, off and on, but steadily they used the plant.

Q. And the rock plant belonged to you?

A. Yes. Pardon me. This is off the record.

(There was a discussion off the record.)

Mr. Monteleone: I want that on the record.

Q. (By Mr. McCall): Will you go back and give use just exactly what equipment and machinery of yours they used.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. You have got everything on the records there some place, but I know they used the plant all the way through. They wasn't able to rent certain pieces of equipment from anybody, so we have got to go out and rent it from somebody else and re-rent it to them at the same prices. We did that, and some we rented to them from day to day, some by a weekly basis, some by a monthly basis, and some by an hourly basis.

Mr. Monteleone: Mr. McCall, we have prepared a bill of particulars, I think, for these various items, which you will have.

Mr. McCall: And that will correspond with this. It may be a little over-reaching, but it won't hurt anything.

The Witness: I can't tell exactly, but the books have got everything.

Mr. McCall: I am sure that your attorney, Mr. Monteleone, has explained to you that, after this deposition is taken down in shorthand and then transcribed, you will have an opportunity to read it over and make any corrections you want to make.

Mr. Monteleone: He understands that.

The Witness: I understand that.

Mr. McCall: That is, corrections to the answers, but not as to the questions.

Mr. Monteleone: Yes. This is off the record.

(There was a discussion off the record.)

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

Q. (By Mr. McCall): I believe you said Duque & Frazzini used a rock crushing plant belong to you? A. Yes.

Q. Did they use that from the beginning of the job, or did it come on after the beginning?

A. To my recollection, it was around the first they started to use it, around the first of April, in that neighborhood somewhere.

Q. What was the name of that plant that you refer to?

A. Pioneer, Pioneer V-48.

Q. On what date did Duque & Frazzini begin work on the subcontract in question?

A. I don't recollect that date.

Q. When did you personally first go on the job at Davis-Monthan Field?

A. Which way do you mean?

Q. After you took over the job and started construction, when did you go on the job at Davis-Monthan Field?

A. I was on the job—I figured the job, and I was on the job right after I did it, and I was on the job off and on all the time, but what dates I don't know; I can't state those dates.

Q. You were on the job from the beginning to the end, every day or so, or every few days; is that right? A. Off and on.

Q. But you do not know of your own knowledge the date that Duque & Frazzini started on this aggregate or subcontract work?

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

A. No, I don't, right now, but it is in the records.

Q. Do you have the records with you?

A. No.

Q. I take it you were not present at the site you have mentioned, some four miles from the main job, when Duque & Frazzini started work?

A. I was on the job when Duque & Frazzini started moving in, if that is what you want.

Q. What time was that, when they started moving in?

A. I don't know the date—some time in February.

Q. Were you out at the site you have described above?      A. Yes.

Q. What machinery did they have moved on to the job when you were there?

A. A part of the plant.

Q. Was that before February 19, 1945?

A. I believe so.

Q. And then did your plant reach the site of the subcontract work, where the work was to be done by Duque & Frazzini, prior to February 19, 1945?

A. Our plant?

Q. Yes.

A. I don't recollect what day, but it was moved out there sometime at that time.

Q. Then you would say that your Pioneer plant was moved on to the site where the gravel and aggregates was to be produced some time the latter part of February, 1945; is that right?



Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. I believe it would be between the 15th and 25th.

Q. Did Mr. George Kovick, your general superintendent, have charge of constructing this Pioneer plant?

The Witness: This is off the record.

(There was discussion off the record.)

Q. (By Mr. McCall): I will ask you to explain, for the record, who constructed, on the subcontract site, the Pioneer rock crushing plant that you have mentioned?

A. We did, by order of Duque & Frazzini. They can't get the men, so they used our men.

Q. And that was under your supervision, or whose supervision?

A. Duque & Frazzini, and also the superintendent, to see that they set up the plant right, that they won't wreck the plant, or something like that.

Q. What was his name?

A. George Kovich.

Q. Then what time did this Pioneer plant start operating?

A. Oh, in the neighborhood of April first.

Q. Did Duque & Frazzini have any other plant operating in the production of material before the Pioneer plant started?      A. Two.

Q. They had two plants before that?

A. Yes.

Q. When did Duque & Frazzini start operating the first plant to produce material?

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

A. Some time in February—I think between the 20th and 25th, one of those dates.

Q. How many plants did they start operating in February?      A. Just one.

Q. Do you know how much material and what kind of material that plant produced in February?

A. That plant was set up for the crusher run base. That means all material combined together, such as sand, dirt and gravel, crushed.

Q. And you say that first plant of Duque & Frazzini's started operating the latter part of February?

A. Between the 20th and 25th.

Q. Then when did they put in the second plant, if ever?

A. I don't know when they completed it or the day they started, but they started some time in February, and I think the first production of that plant they put in, the second plant, was sometime between the 25th of March and the 1st of April.

Q. What were those dates—the beginning of the second plant installed by Duque & Frazzini?

A. They started some time in February, I believe.

Q. That is, as I understand it, then, the first plant that was installed by Duque & Frazzini started operating between the 20th of February and the 1st of March?

A. Yes, between that time.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. And the second plant that they installed started operating between what dates?

A. The 25th of March and the 1st of April.

Q. Between the 25th of March and the 1st of April?      A. Yes.

Q. And the Pioneer plant which was constructed started operating about April 1, 1945?

A. Between the 1st and 3rd or 4th, something like that. I don't know the date exactly.

Q. But it was within—

A. But it was within five days there.

Q. Who owned the first plant they started operating at the job?      A. I don't know.

Q. What was that plant called?

A. I think it was a home-made affair. I don't know if there was any name to it.

Q. What kind of aggregate, if any, did it produce?      A. A crush run base.

Q. Rock-crush?      A. Yes.

Q. What kind of aggregate did the second plant produce?

A. It was supposed to produce gravel for concrete paving, supposed to produce material for that.

Q. And the third plant, that was owned by you, the Pioneer—that made three plants, didn't it?

A. Yes; and they have got one more besides that.

Q. Which made a total of four plants on the job?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. Sometimes four plants in there.

Q. Then the third plant that belong to you was 4/1/45, or thereabouts?

A. Something like that.

Q. When was the fourth plant installed?

A. In that neighborhood, from March 15th to April 1st.

Q. What did it produce?           A. Sand.

Q. Rock?           A. Sand.

Q. Sand?           A. Yes.

Q. Did the first plant that was installed produce anything except rock at any time?           A. No.

Q. That is all it produced?

A. That is all it produced.

Q. Was rock the only thing they produced for you prior to the 25th day of March, 1945?

A. That is all they produced.

Q. Did they produce any sand in that time?

A. The sand plant was set up in March—I don't know what date, but between the 20th and the first of April, anyway—and they produced some sand out there. I don't know what date. Of course, it wasn't any of our business to say when they produced it, and they could do it as they wanted to.

Q. How many times, if any, were you out on the job of Duque & Frazzini between the 20th day of February, 1945, and the 25th day of March, 1945?

A. I don't know, but any time I was over there I was every day in that pit. And Duque wasn't

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

there the first time, but Frazzini was there all the time; every time I was there Frazzini was there, but Duque wasn't there for quite a few days—I didn't see him on the job.

Q. What was the first time you were there—when in February, 1945?

A. Like I told you, the day they moved the stuff in, the first part of the plant. I don't know what date.

Q. It was around the 20th of February, was it?

A. Before that.

Q. Were you there on the 19th and 20th of February?      A. I don't know.

Q. You don't know, then, whether they started operating this plant on February 19th or not?

A. I don't know, but I think we have got records of it.

Q. From whom did you get those records?

A. At the time we took the material.

Mr. McCall: The witness didn't understand the question. Will you read the question to him?

Mr. Monteleone: I think he did. Their records will show when they first started to haul material from the plant.

Mr. McCall: My question was, from whom did he get the records?

The Witness: From our own records.

Q. (By Mr. McCall): What officer or employe of your corporation made up the records?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. Naturally, when I go out there, the first load we took out of the Duque & Frazzini plant, that is in our records.

Q. Do you know what date that was?

A. No, I don't know when.

Q. Do you have the records here?

A. I think the records are some place.

Q. Did your general superintendent make you a daily record of the operations of Duque & Frazzini and send it to your Alhambra office?

A. No.

Q. Now, state, if you can, Mr. Basich, the date that Duque & Frazzini did the last work on the subcontract.

A. Oh, I believe they pulled off the job——

Mr. Monteleone: Mr. McCall, when you referred to the subcontract, you referred to the instrument designated as "Subcontract"; is that right?

Mr. McCall: That is right. I am just going by the instrument. It will be stipulated that when I refer to the subcontract of Duque & Frazzini I am referring to the instrument which purports to have been executed between Basich Brothers Construction Company and Duque & Frazzini on the 7th day of February, 1945, and which bears on its face the word "subcontract", and to which the attorney for the plaintiff objects on the ground that he claims that it is not a subcontract.

Mr. Monteleone: Wait a minute. You are wrong there. I do not claim or disclaim that it is a sub-

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

contract. I merely take the position that whether it is or is not is a legal proposition for the court's interpretation, and not for you or me to interpret, and I don't want this witness on record as giving his own conclusion of law as to whether it is a sub-contract or not.

Mr. McCall: Outside of that, you do not object to my referring to it by the name that it bears?

Mr. Monteleone: That is right.

Mr. McCall: Now would you refer back to the question, Mr. McClain, which was, "When did Duque & Frazzini do the last work on the sub-contract"? Will you read that back to the witness?

(The last question was read by the reporter.)

A. As far as I remember it was in the first part, the first week in June, they pulled off the job and refused to proceed with the work.

Q. (By Mr. McCall): As I understand it, Mr. Basich, you are not able to state definitely the first day that Duque & Frazzini produced some material on the job?

A. Definitely, that is correct.

Q. But they did produce, with one plant, some material on the job, the last week in February?

A. I believe between the 20th and the 25th.

Q. Between the 20th and 25th?

A. Of February, yes.

Q. Then did Duque & Frazzini work continuously on the job from the time they started, on the

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

20th or 25th of February, 1945, until the first week in June, when you state they pulled off the job?

A. They were on the job continuously. I don't know that both of them were on the job, but Duque & Frazzini were represented there.

Q. Who completed the work referred to as the "subcontract"?

Mr. Monteleone: You mean who did the physical completion of it?

Mr. McCall: No. I imagine laborers did the physical completing of the job.

Mr. Monteleone: It is our contention that the work was completed for the benefit of your company and Duque & Frazzini, and the physical part of it was done by the Basich Brothers firm.

Q. (By Mr. McCall): Is that your answer?

A. That is right.

Q. That it was done by Basich Brothers?

A. That is right.

Q. Did Basich Brothers complete the work by its own force, or sub-let the work to some other contractor?

A. We completed the work with our own force, by hiring this equipment, and paid for the same, and hiring the men and paying them, and all the other work, with the exception of one crushing plant that we leased at so much a cubic yard, truck measure.

Q. And who did that one plant belong to?

A. PDOC, of Tucson, Arizona.



Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. Then did Duque & Frazzini, while they were on the job with the plant you have mentioned, produce 1600 cubic yards of material per day?

A. They were capable.

Q. Then when did they first produce 1600 cubic yards of material per day?      A. I don't know.

Q. Your records would show?

A. They will show whatever we took. But I want you to understand, Mr. McCall, all the concrete material, aggregate, produced by Duque & Frazzini, that was delivered to the stock pile by them, and therefore we didn't know how many yards they put in there. On a crusher-run base, they produced it, and we were supposed to take whatever we could use in connection with our job, and the rest of it was supposed to be stock-piled. So they were stock piling, and we took the material at the same time. Therefore I can't tell you correctly how much they produced.

Mr. McCall: Will you read that last part back to him?

(The last answer was read by the reporter.)

A. (Continuing): That is on the one plant; that is on the crusher run plant. That is the first one they sent in.

Q. The first one they sent in?

A. Yes; that is right.

Q. Do you know the total amount of material produced for you by Duque & Frazzini while they were on the job?      A. I don't know offhand.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. Do you have a record that would show that?

A. Yes.

Q. Then you do not have that record with you?

A. Not with me, no.

Mr. Monteleone: Off the record.

(There was a discussion off the record.)

Q. (By Mr. McCall): Approximately how many men did Duque & Frazzini work?

A. I don't know.

Q. Did Duque & Frazzini have a superintendent on that job?

A. I don't know. They have got somebody in charge.

Q. Did they have a man by the name of Albino?

A. Yes.

Q. Is he working for you now?           A. No.

Q. Prior to the time he went on the Duque & Frazzini job he was with you, was he not?

A. Off and on.

Q. Off and on?           A. Yes.

Q. Who paid the wages or salaries for the employes of Duque & Frazzini?

Mr. Monteleone: You mean who handed the physical money to them; is that correct?

The Witness: I didn't get that.

Mr. McCall: Will you read it to him, Mr. Reporter?

(The last question was read by the reporter.)

A. We did, on their request, on Duque & Frazzini's request, as provided in the contract.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. (By Mr. McCall): Compensation was carried on the subcontract job, was it not?

A. We charged them for the compensation, and the men were covered under our compensation.

Q. Under your compensation? A. Yes.

Q. Then in the insurance policy of compensation, instead of Duque & Frazzini being named as the employer, Basich Brothers Construction Company was named as employer; is that right?

Mr. Monteleone: You mean in the policy itself?

Mr. McCall: Yes.

Mr. Monteleone: That is, if you know, Mr. Basich, how the policy reads.

A. I don't know how the policy reads, but I know this much, that whatever is covered in our payroll is covered with our insurance, and we agreed to advance the money and pay the men, so it is in our payroll, and charge the same to Duque & Frazzini, according to the contract.

Q. All the employes, then, of Duque & Frazzini were on your payroll? A. I think so.

Q. And on your insurance roll all the time?

A. Yes.

Mr. Monteleone: Now, whether it was or not—

The Witness: I don't know that.

Mr. Monteleone: Don't answer that.

The Witness: You know that, but I don't know.

Q. (By Mr. McCall): Do you know who is named as the employer in the public liability and property damage insurance policy?

A. No, I don't, offhand.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

Q. Did the State of Arizona carry the compensation policy?      A. The State of Arizona?

Q. The State Fund?      A. Yes.

Q. Who carried the liability insurance on the subcontract job, for property damage?

A. I don't know that. I don't think we did.

Mr. McCall: Off the record.

(There was a discussion off the record.)

Q. (By Mr. McCall): Did Basich Brothers Construction Company deduct the 20 per cent withholding tax and send it to the Government?

A. On the labor?

Q. On the labor.

A. On the payroll?

Q. On all the employes.

A. On the payroll.

Q. Of Duque & Frazzini?

A. Yes, we did.

Mr. Monteleone: That is, it was a matter of bookkeeping, wasn't it?

A. It was just a matter of bookkeeping, and a matter of law, that you have to take it off, as long as you have got it on your payroll.

Q. (By Mr. McCall): Then in the income withholding tax return which was filed with the Federal Government covering the employes on the subcontract work, Basich Brothers Construction Company was named as the employer, or were they?

The Witness: Pardon me. Off the record.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

(There was a discussion off the record.)

Mr. McCall: May it be stipulated that you will furnish to me, as attorney for the defendant, the name which is shown on the public liability policy as the employer, and the name which is shown on the compensation policy which was carried as the employer for the men of Duque & Frazzini, and the name shown as employer on the income withholding tax return filed with the Federal Government on all the subcontract work referred to in the subcontract of February 7th?

Mr. Monteleone: Oh, yes, I will give you that information.

The Witness: And old age and Social Security too.

Q. (By Mr. McCall): Did Basich Brothers Construction Company keep a daily record of the material furnished by Duque & Frazzini while they were on the job?

A. On that answer, I can tell you what they tell us they produced. Yes, we have those records.

Mr. McCall: Will you read that back to me? I didn't quite understand the answer.

(The answer was read by the reporter.)

Q. (By Mr. McCall): The only records that you have are the records given you by Duque & Frazzini?

A. Of daily production, yes.

Q. On daily production? A. Yes.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. Didn't this Mr. George Kovick keep a daily record of production?

A. No. But we kept what Duque & Frazzini tell us they produced, but we keep a record of what we took.

Q. All the material which you got from Duque & Frazzini was hauled by your trucks, was it not?

A. From the location of the plant to the job, yes.

Q. And you kept daily records of all the trucks which hauled the material from the subcontract job, four miles from your job at Davis-Monthan Field; is that right?

A. Whatever we took from the plant, we kept a record of that.

Q. Did you keep the record by yards or by truck loads?

A. The concrete material, we kept how many yards of concrete we poured, and those have been weighed on the scales to our batching plant.

Q. That is, all the material and aggregate produced by Duque & Frazzini under the subcontract was weighed at the batching plant before it went into the concrete; is that right?

A. The concrete material, yes.

Q. Yes.

A. The concrete material only.

Q. What do you refer to as concrete material?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. What went into concrete, the ones incorporated in concrete, rock and sand.

Q. Produced by Duque & Frazzini?

A. That is right.

Q. What other material did they produce?

A. Crusher run.

Q. What was that used for?

A. For base.

Q. That was the concrete base?

A. Under the concrete.

Q. Did you use any other material?

A. They produced a plant mix material for black stuff.

Q. What is plant mix material?

A. That consists of sand, rock and muck sand.

Q. And that is all mixed together and put over what?

A. Well, I don't know—it was put on top of the crusher run.

Q. And the concrete run then was put on top of that?      A. No.

Q. What was put on top of that?

A. Nothing.

Q. That was the apron?

A. No. That was the outside of the concrete apron, the concrete aprons and roadways and taxi ways; that was put on the outside edge, and that was weighed by the ton.

Q. You paid Duque & Frazzini by the ton on that?      A. That is right.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

Q. As I understand it, then, your men kept a daily record of all the truck loads hauled from the subcontract job to your job; is that right?

A. On crusher run, yes.

Q. Which one of your men kept that record—Kovick? A. What do you mean?

Q. The record of all of the truck loads of material you just mentioned?

A. Well, someone kept a record, but not Kovick, but they were given to Kovick every night.

Q. Do you know if the record was given to him by Albino?

A. No. Albino had nothing to do with this.

Q. Anyway, the material was not paid for until it went in place on the job?

A. That is right, and we didn't accept the material until we took it, therefore Albino wasn't a part of that at all.

Q. Then the record was turned in by someone to George Kovick?

A. By the timekeeper or bookkeeper or someone—I don't know.

Q. And George Kovick turned it in to your company?

A. On concrete paving, we have got two records on that.

Q. What records are those?

A. We have got the records of the batching plant, how many batches and how heavy those batches were, and the weight of the batch, every



Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

batch, and then we have got records on the mixer that registers every batch on the automatic register. We always keep the register.

Q. Then these reports that you have just mentioned were sent daily to your head office in Alhambra?      A. Not daily.

Q. How often were they sent?

A. We kept a monthly record up there all the time.

Q. Did Basich Brothers Construction Company own the land from which Duque & Frazzini got the material?      A. No.

Q. Did Basich Brothers Construction Company lease that land from someone else?

A. I myself made a deal before I put in the bid on the job, on a royalty basis.

Q. Was George Kovich on the job as superintendent for you all through February and March and April of 1945?

A. What day George Kovick started work I don't know. It was some time in February, I believe, or it must have been February and he stayed on the job until the job was finished.

Q. Do you know where he is located now?

A. In Fresno, California.

Q. I believe you said that the only material produced in February by Duque & Frazzini was rock from the first plant that they installed; is that right?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. Crusher run from the first plant they installed.

Q. Well, how much material in February and March did they produce per day, if you know?

A. I don't know.

Q. When did you first learn, if you ever did, that they were not producing 800 yards per day per plant of suitable material?

Mr. Monteleone: This is off the record.

(There was a discussion off the record.)

Q. (By Mr. McCall): When did you first discuss with Duque & Frazzini, if at all, the question of their producing enough suitable material?

A. When did I first discuss it with them?

Q. Yes, if you ever did discuss it with them.

A. I discussed it with them some time in March.

Q. What time in March was that?

A. I don't know the date. I couldn't say it.

Q. Where did this discussion take place?

A. At the job.

Q. Out at the job?           A. Yes.

Q. Who was present at that time?

A. I wouldn't say who was present. I am satisfied that Kovick was and Frazzini.

Q. What was said by you to Frazzini at that time?

A. I asked him how he figured to produce the material, and he told me all about it, how to do it; and I asked him, I said, "Frazzini, you had better

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

stock pile some material." Well, he don't like stock pile, because it costs them money to stock pile. And that is all I can say to him, because I can't tell him what to do. I thought he was going to put on two shifts when the time comes.

Q. Did you tell him so?

A. No, I never told him to put on two shifts.

Q. Approximately what time in March was this talk with Frazzini?

A. I don't know. It must be the first part of March, I believe, or somewhere around the last of February or the first of March.

Q. The last of February or the first week in March?

A. Some time in there.

Q. Up to that time he hadn't produced any?

A. Yes; he had produced what we could use, plenty for us to use.

Q. Plenty of what?           A. Crusher run.

Q. But nothing else?

A. We didn't need it.

Q. You say he had produced plenty up to that time for you to use. What was the occasion of your complaint to him at that time?

A. I didn't complain. I just asked him how did he figure to produce material, and how fast, and everything else.

Q. But up until that time he had produced all the material you needed?           A. Yes.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

Q. And the only thing you had needed was some rock?

A. Crushing rock, yes, gravel base.

Q. How much, then, had you needed?

A. I don't know, but he produced all we needed. I don't know how much.

Q. Do you know whether or not it had reached 800 cubic yards per day?      A. I don't know.

Q. You don't know that?      A. No.

Q. When was the next time you discussed with either Duque or Frazzini the question of them furnishing you adequate material?

A. I think it was the last part of March.

Q. Where did that discussion take place?

A. At the place there.

Q. With Frazzini again?

A. With Frazzini again.

Q. Was George Kovick with you again?

A. Yes.

Q. Was that the first time you had been back on the job since this first discussion you just referred to?      A. I don't know.

Q. You might have been back on the job between those times?

A. I might. Of course, my diary would show, but I haven't got it with me.

Q. Was anyone present besides you and Frazzini that time?      A. I think Duque was, that time.

Q. What was said then about them producing material?

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

A. I said to them, I asked them to produce material for concrete, and when was it going to be ready, because we were ready to start.

Q. Had they produced any material for concrete up to that time?           A. No.

Q. Did they tell you why they had not produced material for concrete up to that time?

A. They told me it cost too much to stock pile a big pile, and they didn't have a plant to set up. I suppose. I don't know what it was. I didn't ask them, because it was none of my business.

Q. When was the next time you discussed with Duque & Frazzini the question of furnishing material under the subcontract?

A. At that time, when I was asking them how they figured to produce material, the answer that they gave me, to my estimation, wasn't satisfactory.

Q. What was the answer?

A. They said they were going to run one shift, and they were going to produce so much, and, to my estimation, they wasn't able to.

Q. What time was this?

A. The last part of March.

Q. That was the last talk you had with them?

A. Yes—or the first part of April.

Q. What did you say to them at that time?

A. I didn't say nothing to them. I got Mr. Monteleone or someone to get in touch with Mr. Bray.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

Q. Where did you say you signed this subcontract with Duque & Frazzini?

A. Some time in February.

Q. And where was that?

A. I believe in our office.

Q. Was there attached to that subcontract at that time a copy of your contract with the War Department?

A. I don't know, but we had the contract in the office.

Q. Did Basich Brothers Construction Company ever give to Duque & Frazzini a copy of its contract with the War Department on this Davis-Monthan Field?

A. You mean our contract?

Q. Yes. A. They had access to it.

Q. Did you ever give them a copy?

A. I don't know.

Q. Do you know how much material was produced by the first plant that was moved on the job up until, say, the 15th of March, 1945?

A. I don't know.

Q. Mr. Basich, I will show you what purports to be a copy of a letter of June 8, 1945, dated at Tucson, Arizona, addressed to Basich Brothers Construction Company at Tucson, from Duque & Frazzini, which reads in part: "You have now moved into the gravel pit near where we are working and have started to produce and are producing the materials which we are required to produce and

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

furnish under our contract with you." Do you know if you received that letter?

A. I suppose we did, but I am not so sure it is word for word, but we did receive a letter.

Q. This letter of June 8, 1945, further states: "We are suspending our operations until you cease producing the material which we are required to produce under our contract, and unless you do immediately cease and remove the new equipment we will remove our equipment from the job and treat this as a breach of and a termination of the contract." Did you receive such a letter from Duque & Frazzini?

A. I don't know the contents of it, but we got a letter from them.

Mr. McCall: I will ask, Mr. Monteleone, if it may be stipulated that this is a copy of the original letter?

Mr. Monteleone: If you say it is. I have a copy of a similar letter, so I assume it is a copy of the original.

Mr. McCall: Will you produce the original at the pre-trial?

Mr. Monteleone: Yes, we will produce it. If not, you may be permitted to use the copy.

Mr. McCall: Thank you.

Q. (By Mr. McCall): After the receipt of this letter of June 8, 1945, from Duque & Frazzini, did

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Basich Brothers stop producing material at the subcontract site?

A. No. They didn't stop.

Q. How long at that time had you been producing material with your own plant and men, as distinguished from the operations under Duque & Frazzini?      A. A day or so.

Q. A day or so?      A. Yes.

Q. Did Duque & Frazzini leave the job?

A. They did.

Q. What date was that?

A. They stopped operations on the 8th or 7th, one or the other.

Mr. Monteleone: Two days previously, about the 6th.

The Witness: I think it was the day before this letter was written.

Q. (By Mr. McCall): Then did Basich Brothers continue the job from June 8th on until it was complete?

A. For the benefit of Glens Falls, yes.

Mr. McCall: I move that that be stricken as not responsive, "For the benefit of Glens Falls."

Mr. Monteleone: In other words, you are trying to minimize the loss of your insurance company.

Q. (By Mr. McCall): Then your answer is that Basich Brothers did continue with the work after Duque & Frazzini, you say, pulled off the job, until the work was completed; is that right?



Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

A. I think, to answer that, we did continue the work, but wrote a letter to Glens Falls giving them so many days to arrange this, to take up on their bond, take up the contract to finish it, or let us finish it.

Mr. McCall: I move that the answer be stricken as not responsive to the question and as self serving.

Q. (By Mr. McCall): I will ask you, Mr. Basich, if you continued the work of producing material which is mentioned in this subcontract with Duque & Frazzini with the same machinery that Duque & Frazzini was using?      A. No.

Q. What?

A. Not all of it—a portion, yes.

Q. What machinery did you continue to use with Duque & Frazzini was using?

A. Duque & Frazzini removed all of their equipment except one electric motor.

Q. What machinery was left, then, when they removed all their equipment?

A. They removed all their equipment.

Q. All the equipment that was left belonged to you, did it not?      A. No.

Q. Who did it belong to?

A. One plant belonged to PDOC, and one shovel belonged to Tempe-Stone, and there was a lot of other small equipment from different people.

Q. At the time they pulled off the job, then,

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

they did not own a plant of any kind, did they?

A. They moved theirs.

Q. Did you keep the same employes they were using?      A. Anyone that wanted to work.

Q. Did Mr. Albino stay on the job?

A. Yes.

Q. Until it was completed?

A. That is right. Well, I don't think it was complete. I think he got hurt before the completion of the job.

Q. He got hurt before?      A. I think so.

Q. And he went on compensation then?

A. Yes, and he is still on compensation, I believe.

Mr. McCall: This is off the record.

(There was a discussion off the record.)

Q. (By Mr. McCall): Then he was injured before the job was completed?

A. I think he was, yes. What day, I don't know.

Mr. McCall: This is off the record.

(There was a discussion off the record.)

Q. (By Mr. McCall): I will show you what purports to be a letter addressed by Basich Brothers Construction Company, and signed N. L. Basich, dated April 5, 1945, addressed to Duque & Frazzini, Tonopah, Nevada, a copy of which was apparently sent to Glens Falls Indemnity Company at Los Angeles, and ask you if that is your signature?      A. That is right.

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

Q. In this letter you state to Duque & Frazzini that in their contract dated February 7, 1945, they agreed to commence crushing material with one plant on February 19, 1945, and you state: "Your attention is directed to the fact that the plant did not commence work on February 19th." When you wrote that letter to Duque & Frazzini, did you know of your own knowledge that they did not commence work on February 19th?

A. They didn't start producing February 19th, no.

Q. And you knew that of your own knowledge?

A. Yes, but they started working on the plant before.

Q. But they did not commence crushing on February 19th? A. No.

Q. Do you know what day they did start crushing?

A. Between the 20th and the 25th. I said that in the record three times.

Mr. Monteleone: That is February?

A. February, yes.

Q. (By Mr. McCall): Now, you state in this letter that they are using your tools and equipment. What tools and equipment belonging to the Basich Brothers Construction Company were Duque & Frazzini using at that time?

A. Well, I think you have the record to take it from. Of course, I can't tell you just what they used. They got what they asked for.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

Q. You further state in your letter of April 5th: "To date you have not averaged 800 cubic yards of material per plant per day." When you made that statement, April 5th, was that from your own knowledge of the situation?

A. That is right, from my own knowledge.

Q. You had investigated personally and knew they had not averaged 800 yards of material per day?

Mr. Monteleone: That was on April 5th.

A. That is right.

Q. (By Mr. McCall): Had you investigated to determine if they had at any time produced 800 yards between February 20th and April 5th?

A. No, I didn't.

Q. How did you reach the calculation that they had not averaged 800 yards per day per plant?

A. Well, just common sense. We know what we took and there wasn't much in the stock pile, so there couldn't be that much.

Q. Do you remember how much you had taken at that time?

A. No, I don't remember, but we had records of it.

Q. There is a letter here of May 12th— we have got two of them, and I want you to see both of them at the same time, and I want you to see if there is any objection, and we may ask a question on those.

Mr. Monteleone: This is Kovich's signature. I

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

have never seen that before. Have you copies of Kovich's letters?

The Witness: I suppose. That letter is all right.

Mr. Monteleone: We will stipulate that both letters are all right, but I want to have copies as my exhibits.

Mr. McCall: If you do not have copies of these, my office will be glad to make them.

Mr. Monteleone: Would you make me copies, because I want these two letters?

The Witness: You have got them in the file somewhere.

Mr. Monteleone: I want those as exhibits in our case, and I would appreciate it if you would send me copies of them.

Mr. McCall: I certainly will. There are two letters of the same date, from Kovich to Duque & Frazzini, both dated May 12th.

Mr. Monteleone: I am going to make a demand on Mr. McCall to produce them.

Mr. McCall: I would suggest that your office and mine get together and find out what each one has that the other hasn't, and we will each furnish the other with what the other has not got. Would you do that?

Mr. Monteleone: Sure.

Mr. McCall: All right. Suppose we defer that.

Mr. Monteleone: The Judge will want copies of all the exhibits that we have to hand to him. We

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

have to have two copies, as I understand of all exhibits.

Mr. McCall: I believe we have to have about three.

Mr. Monteleone: Why three?

Mr. Burris: Two for the Court and one for the Clerk.

Mr. Monteleone: All right. We have copies.

Mr. McCall: You have copies?

Mr. Monteleone: Yes.

Mr. McCall: That is fine.

Q. (By Mr. McCall): In one of these letters dated May 12th, 1945, address to Duque & Frazzini at Tucson, Arizona, by Basich Brothers Construction Company, by G. W. Kovich, Sup't., it states, in part: "We have received no improvement whatever on your material delivery." Will you please state, Mr. Basich, if you can, what Mr. Kovich meant by the term "material delivery"?

A. I will tell you what the letter meant. Mr. Bray and myself—

Mr. Monteleone: By Mr. Bray you mean the representative of the Glens Falls Indemnity Company?

A. Yes. He came over to Tucson, and we went—

Q. (By Mr. McCall): Was that on May 12th?

A. Before that.

Q. Well, I want to ask you—

A. Well, I am telling you the answer to it.

Q. Go ahead.

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. And we spent two days, and Bray was convinced——

Mr. McCall: I object to that as a conclusion.

The Witness: Well, don't put anything down until I——

Mr. Monteleone: Yes, take it down.

Mr. McCall: It is not responsive to the question. There is no use to take it down. Will you read the question that was asked? I am sure the witness does not understand the question.

Mr. Monteleone: I think he does.

The Witness: I understand the question.

Mr. Monteleone: But you don't understand his answer. In other words, Bray and Mr. Basich had discussed with Duque & Frazzini certain improvements to be made, and Duque & Frazzini failed to comply with the suggestions made, and that is the reason this letter was written, because he had not lived up to what he had previously discussed with Mr. Bray.

The Witness: Mr. Bray and myself and Duque & Frazzini and Mr. Kovich and Mr. Earl, of PODC, made a deal for Duque & Frazzini to rent them the same as we operated after Duque & Frazzini left, to be delivered next day on the job and start to erect the plant next day, move it in. And Mr. Bray left that night, and I left that night, and Mr. Frazzini called up George Kovich and he backed out on it, and two or three days after that George Kovich wrote him a letter that he didn't live up to this

(Deposition of Nick L. Basich.)

Plaintiff's Exhibit No. 21—(Continued)

verbal agreement, and I got Mr. Bray and Mr. Earl——

Q. What is the date you are talking about now?

A. I don't know what date we were out there—some time in April, or probably the 1st part of May.

Mr. McCall: I move that all of the answer of the witness be stricken as not responsive to the question, and that the interjections of his counsel, Stephen Monteleone, be stricken, as self serving and irrelevant and immaterial.

Q. (By Mr. McCall): I will ask you, then, Mr. Basich, if Duque & Frazzini delivered material from the subcontract site to the prime contract on the air base?      A. No.

Q. Then can you tell us what Mr. G. B. Kovich, superintendent, had reference to when he spoke of material deliveries?

A. Delivery in our trucks.

Q. Then he meant the delivery of material in your trucks on the subcontract job?

A. No—at the plant.

Q. At the plant on the subcontract job?

A. Well, I wouldn't call that a subcontract job.

Q. Well, what was it?

A. Well, it was at the plant.

Q. That was the place you had leased some land



Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

from the party you mentioned a while ago, for the purpose of producing this material?

A. That is correct.

Q. That is correct.

A. That is where Duque & Frazzini produced their material.

Q. The other letter addressed to Duque & Frazzini by G. B. Kovich, dated May 12, 1945, states, in part: "You lack proper and adequate equipment to operate even on a single shift basis without breakdown." The last paragraph of the letter states: "The above statement regarding lack of proper equipment can be verified from our daily production records of rock base delivered from your plant." Do you know what is meant by the term "daily production records"? In other words, what production was he referring to as "daily production records"?

A. At the time he wrote this letter there probably was no material in the stock pile and he didn't get enough material to keep working on the job.

Mr. McCall: Read the question to the witness again. I don't think he understood it.

The Witness: Yes, I understood it.

Q. (By Mr. McCall): What records did he refer to?

A. Records that we took of material.

Q. Who kept the records?

A. We kept records of what we took.

Q. Was it Kovich that kept the records?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. No. Somebody kept the records, but Kovich was the superintendent, so he didn't keep the records. Although this record that you are talking about on the gravel base nobody is correct on.

Mr. McCall: Will you read that back to me? I don't believe I got it.

(The last answer was read by the reporter.)

The Witness: Couldn't be.

Q. (By Mr. McCall): What do you mean by saying that nobody is correct on the gravel base referred to, or is it referred to in this letter of May 12th?

A. The records they kept or we kept and Duque & Frazzini keep for themselves, they were based on truck measure. Therefore our contract with Duque & Frazzini to furnish us material is based in place, which is different than the shrinkage between truck measure and material in place, and that would run from 15 to 33 per cent, and what this was running, I couldn't tell that, until we got through the job. So we got paid in place from the Government, and then we got the records of the truck measure, which is much better than records in place, and then you have got to reduce that record by a certain percentage, the difference between the two figures.

Q. In other words, as I understand it, the material in place, that is laid in the concrete?

A. No; the concrete is different. That is already understood, so much a yard of concrete, but this

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

crusher run, he was stock piling that, and part of it was truck measure, and all measures, as far as the records meant, is the records of truck measure.

Q. Then George Kovich was referring, in his letter of May 12th, to truck measurement, when he was speaking of the records?      A. Yes.

Q. Of daily production?      A. Yes.

Q. Then the material in place was about 13 to 33 per cent less than——

A. I don't know. Of course, we have got to figure that out, how much it is. We put that stuff in place, and then we get an estimate after 15 days, and you know how engineers are; sometimes they give you a full estimate, and sometimes they don't give it to you.

Mr. McCall: (Exhibiting paper to Mr. Monteleone) Do you have the original of that?

Mr. Monteleone: We have a copy of it.

Q. (By Mr. McCall): I show you what purports to be a copy of a letter dated May 19, 1945, addressed to Basich Brothers Construction Company, Tucson, Arizona, by Duque & Frazzini, by A. Duque, which states, in effect, that Duque & Frazzini gave orders to Albino and the other employes of Duque & Frazzini to stop work at 9:15 a.m. until the next morning, and that Albino and George Kovich issued orders superseding their orders and kept the men at work. Is that correct, or do you know of your own knowledge?

Plaintiff's Exhibit No. 21—(Continued)  
(Deposition of Nick L. Basich.)

A. I suppose it is correct. What happened, they didn't have no material to run the plant, for us to use.

Mr. McCall: This is off the record.

(There was a discussion off the record.)

The Witness: And Duque & Frazzini refused to operate the plant to give us the material to keep the job going, and Mr. Bart Woolums, the representative of the War Department, told us to produce material. And we went down and asked Duque & Frazzini, and they refused to.

Q. Were you present on the job at that time?

A. No.

Q. How did you learn the information you have just stated? A. From Mr. Kovich.

Q. From Mr. Kovich? A. Yes.

Q. Did he tell you or write you?

A. He told me that. I was there next day or two days after.

Q. Were Duque & Frazzini present when this happened, when he told you?

A. No. But Woolums, Bart Woolums, was present when George Kovich ordered those men to work.

Q. Then on May 19th you were not on the subcontract job personally? A. No, I wasn't.

Q. But Mr. Kovich was on there?

A. Yes.

Q. When Duque & Frazzini ordered their men to stop work, your Mr. Albino and Mr. Kovich

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

ordered them to continue work, and they did continue work; is that correct?

A. I suppose so. I wasn't there.

Q. That is what Mr. Kovich reported to you the next day?

A. That is right.

Q. Do you know what the duties of Albino were at that time?

A. Albino was a crusher foreman all the time.

Q. How long had he been working for you prior to this time?

A. Off and on since 1938 or '39.

Q. In your complaint here you allege that the defendant Glens Falls Indemnity Company executed a surety bond on about February 29, 1945. When did you first personally see that bond?

A. I don't know when I saw it. I don't know the date.

Q. Do you know about what date?

A. I don't know if I ever saw the bond. I don't think I saw the bond until some time in the latter part of April or May, because the bond came back in the office and stayed in the office all the time.

A. Do you know where it was signed by Frazzini?

A. No, I don't.

Q. Who sent it to your office, if you know?

A. Frazzini.

Q. Frazzini sent it to your office in Alhambra?

A. I think so. I don't know who did it, but—

Q. Well, that is all right. Do you know whether

Plaintiff's Exhibit No. 21—(Continued)

(Deposition of Nick L. Basich.)

or not Frazzini delivered it to Mr. Kovich in Tucson?      A. I don't know.

Q. At the time you signed the contract with the alleged subcontractors Duque & Frazzini, do you know if they were licensed contractors in Arizona?

A. No.

Q. They were not, or you don't know?

A. No.

Q. What do you mean by "no"?

A. I don't know.

Q. You did not know?      A. No.

Q. Do you know yet whether they were licensed to contract in Arizona?      A. No, I don't.

Mr. McCall: That is all. Have you any questions?

Mr. Monteleone: That is all. I have no questions.

/s/ NICK L. BASICH.

State of California,  
County of Los Angeles—ss.

I, C. W. McClain, a Notary Public in and for the County of Los Angeles, State of California, duly commissioned and qualified to administer oaths, hereby certify that Nick L. Basich, the witness named in the foregoing deposition, was, before the commencement of his deposition, by me duly sworn to testify the truth, the whole truth and nothing but the truth; that said deposition was taken before me as such Notary Public, pursuant to Stipu-

## Plaintiff's Exhibit No. 21—(Continued)

lation to Take Deposition hereto annexed, at the office of Stephen Monteleone, Suite 1050 Petroleum Building, 714 West Olympic Boulevard, in the City of Los Angeles, County of Los Angeles, State of California, on Friday, June 21, 1946, commencing at the hour of 2:00 o'clock p.m. of said day.

I further certify that the said deposition was written down in shorthand writing by me and was thereafter transcribed into typewriting under my supervision, and that the typewritten deposition was submitted to the deponent for reading, and that deponent, after reading the same, made the following corrections or changes in said deposition, giving the following reasons for such changes or corrections:

Page 6, Lines 18 and 19. Strike out "to go to" and insert in lieu thereof "for the." The witness stated that the substituted words better expressed his meaning.

Page 15, Line 20. Insert the word "dirt" between the words "sand" and "and." The witness stated that the word "dirt" should be inserted in that place.

Page 25, Line 3. Add at the end of line 3 the words "as provided in the contract." The witness stated that those words should be added there.

Page 25, Line 21. Strike out the word "money" and insert in lieu thereof the word "men." And add at the end of line 21 the following: "and

Plaintiff's Exhibit No. 22—(Continued)  
writing by a shorthand reporter, and thereafter transcribed into typewriting by him or under his direction, and may be read and corrected by the witness, and that the said deposition may be read and used in evidence in said cause, on any trial thereof or proceeding therein, subject to the same objections and exceptions as if said witness were personally present and testifying on the stand, but without objection or exception to the time, place or manner of taking the same, or the form of the question, unless noted at the time.

Dated this 17th day of July, 1946.

/s/ STEPHEN MONTELEONE,  
Attorney for Plaintiff.

/s/ JOHN E. McCALL,  
Attorney for Defendant  
Glens Falls Indemnity Co.



Plaintiff's Exhibit No. 22—(Continued)

In the District Court of the United States for the  
Southern District of California, Central  
Division

No. 5021-PH

BASICH BROTHERS CONSTRUCTION  
COMPANY, a corporation,

Plaintiff,

vs.

GLENS FALLS INDEMNITY COMPANY, a  
corporation, and ANDREW DUQUE and  
CARSON FRAZZINI, co-partners doing busi-  
ness under the name of DUQUE & FRAZZINI,  
Defendants.

DEPOSITION OF GEORGE W. KOVICK

called as a witness on behalf of defendant Glens  
Falls Indemnity Company, on Wednesday, July 17,  
1946, at the hour of 1:00 o'clock p.m. of said day, at  
the office of Stephen Monteleone, Esq., 1050 Petro-  
leum Building, 714 West Olympic Boulevard, Los  
Angeles, California, pursuant to Stipulation to  
Take Deposition hereto annexed, before C. W.  
McClain, a Notary Public in and for Los Angeles  
County, State of California.

Appearances:

For the Plaintiff Stephen Monteleone, Esq.

For Defendant Glens Falls Indemnity Co.: John  
E. McCall, Esq.

Plaintiff's Exhibit No. 22—(Continued)

## GEORGE W. KOVICK

called as a witness on behalf of Defendant Glens Falls Indemnity Company, having been by me first duly sworn, testified as follows:

## Direct Examination

By Mr. McCall:

Q. Will you state your name to the reporter, and your address, please, Mr. Kovick?

A. George W. Kovick, 145 West Shields Avenue, Fresno, California.

Mr. Monteleone: Do you have a phone there, George?      A. Yes.

Mr. Monteleone: What is it?

A. 44878.

Q. (By Mr. McCall): What is your business, Mr. Kovick?      A. Contractor.

Q. How long have you been in the construction business?

A. You mean for myself or the entire period?

Q. Altogether.      A. Fifteen years.

Q. Are you acquainted with Nick L. Basich, of the Basich Brothers Construction Company?

A. I am.

Q. How long have you known him?

A. Since 1936.

Q. Are you related to him?      A. No, sir.

Q. Have you worked for the Basich Brothers Construction Company?      A. Yes, sir.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. Had long had you worked for them prior to 1945?      A. Since April, 1936.

Q. During 1945 were you the General Superintendent for Basich Brothers Construction Company at Davis-Monthan Field, in Arizona?

A. Yes, sir.

Q. And as General Superintendent you had charge of all the work in connection with the air field contract?      A. Yes, sir.

Q. When did you go to Tucson on the job in question?      A. February 11, 1945.

Q. Had any construction work been done on the job before you got there?      A. Yes, sir.

Q. Who was superintendent during that work?

A. Mr.—I am trying to recall his name.

Q. You can't recall his name?

A. I can't recall his name. He was in charge of all operations up to the time I arrived on the job.

Q. What was the nature of the work which had been done under the contract on the air field prior to February 11th?

A. Preparatory work, consisting of stripping grading areas, some grading work, and a small amount of excavation for drainage work, and the usual setting up of shops and repair facilities, and miscellaneous preparations.

Q. From February 11th, 1945, you were on the job continuously until it was completed?

A. Yes.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. Do you remember the date of completion?

A. It was in the neighborhood of October 25th, I believe, but the job wasn't accepted until some time later.

Q. About October 25th was when the last work was done on the job?

A. Yes. All the work was completed on that date.

Q. Do you remember the date that the last work was done on what is called the subcontract of Duque & Frazzini?

A. Do you have reference to the last date they pulled off the job?

Q. I have reference to the date that the last material was produced in the pit or on the subcontract.

A. I can't recall the last date without checking the records.

Q. Are you acquainted with Andrew Duque and Carson Frazzini?      A. I am.

Q. And they had a subcontract or a contract under Basich Brothers for furnishing some material?      A. Yes.

Q. Did you ever see the contract or subcontract?

A. Yes, sir.

Q. You are familiar with its terms?

A. Yes, sir.

Q. With reference to the Basich contract at the air field, where was the subcontract work of Duque & Frazzini located, how far and in what direction?

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

A. They were located in the pit, about four miles north and east of the air field, on property owned by Mr. and Mrs. Golub.

Q. Did you help prepare this bill of particulars?

A. In what respect?

Q. Did you help assemble the material that is in here?      A. No, sir.

Q. Have you ever looked over this bill of particulars since it was prepared?      A. No, sir.

Q. You are not familiar with the structure of it, then?      A. No, sir.

Q. Are you acquainted with Jack Brown, who is shown to have worked on the alleged subcontract of Duque & Frazzini?

A. I may know the man, but I don't recall his appearance or his duties on the project.

Q. He is listed as tractor drive. Does that recall to your mind his work?

A. I do recall tractor drivers on the project, but I wouldn't know them by name at this time.

Q. In connection with the employes on the subcontract, do you know who set the wages for regular time and overtime?

A. Me, and the unions.

Q. That was set by the unions?

A. It was set by the unions and also in the general specifications covering the work.

Mr. Monteleone: You mean in the general specifications prepared by the United States Government?      A. That's right.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. (By Mr. McCall): What hours, if you know, are meant by "regular time"?

A. The first eight hours an employe works during the weekly days, consisting of Monday, Tuesday, Wednesday, Thursday and Friday.

Q. Then the first five days in the week, excepting the first day, which is Sunday?

A. Yes, sir.

Q. Each employe on the job was on regular hours the first eight hours he worked?

A. Each day, yes, sir.

Q. No matter what time he started?

A. That's right. That was contrary to the union provisions. They have a clause stating that regular time starts at 7 a.m. in the morning, whereas it is customary with contractors, if the men are willing to start at six or five, for the regular time they start, that that is the time they start work.

Q. This statement shows, for instance, from February 11th to February 17th, 14 hours regular time and 20.5 hours overtime. Do you have any recollection as to the time this particular tractor driver Jack Brown worked? A. No, sir.

Q. Did some of the employes work regular time for Basich Brothers Construction Company away from the pit and some overtime on the same day on the Duque & Frazzini job?

A. There may have been a few instances, where they requested the services of a man for about half

## Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

an hour or an hour in the evening. There were occasions where they required the services of one of our men for a matter of a short period, say half an hour or an hour, where the man would work on our payroll for 10 hours, and after the completion of his 10 hours he would go over and take care of Duque & Frazzini's work, in which case we paid the man eight hours regular time, plus two hours overtime, plus whatever work he did for Duque & Frazzini. That wasn't customary. That was an occasional happening.

Mr. Monteleone: Let me just ask a question. At whose request were the men working for Basich Brothers called on to do work for Duque & Frazzini?

A. Mr. Duque or Mr. Frazzini would request myself or one of my foremen to send a man over to their plant that evening, and also outline the type of work that he would perform for them, whether it was clean-up work or repair work, or whatever the nature of the work was.

Q. (By Mr. McCall): Then one of the men working on the main job for Basich Brothers worked for Duque & Frazzini overtime where you instructed them to?      A. That's right.

Q. Then you knew about each instance of that kind that happened?      A. Yes, sir.

Q. The place you mentioned as being four miles

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)  
from the air field, where the material was produced,  
was referred to as the "pit", was it not?

A. Yes, sir.

Q. And when you refer to the "pit", you mean  
the work known as the Duque & Frazzini subcon-  
tract?

A. In other words, that was the area where they  
obtained and processed materials on their sub-  
contract, for their subcontract.

Q. Did you go over to the pit on the 11th of  
February, the first day you arrived in Tucson?

A. Yes, sir.

Q. What work did you find going on there that  
day?

A. If I recall, Duque & Frazzini were erecting  
a small crushing plant.

Q. What kind of a crushing plant was it?

A. Well, it was what we would call a home-  
assembled plant. In other words, there are several  
types of equipment involved in it. It wasn't a trade-  
marked plant manufactured by one manufacturer;  
it was a series of conveyors made by one manufac-  
turer, and bunkers by another, and the crusher by  
a third, and a power plant by a fourth.

Q. Did you talk to Duque & Frazzini that day?

A. I don't recall.

Q. Were any tractors working on the site that  
day, at the pit?

A. I don't recall that either.

Q. Do you know if any work had been done in



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

the pit by Basich Brothers Construction Company prior to February 7, 1945?

A. I couldn't recall that, sir.

Q. After February 11th, did you visit the pit every day through February? A. Yes, sir.

Q. Were both Duque and Frazzini there each day?

A. No. Mr. Frazzini was there the largest part of the time in February, and Duque showed up on the job some time in March, if I recall correctly.

Q. Then what time did they finish the construction, if you remember, of this home made crusher plant that you referred to?

A. I would have to check on my records for that. I am hazy on dates.

Q. Do you have your books with you, that most contractors prepare during the construction of a job?

A. No. I believe that is in the files of Basich Brothers Construction Company. We generally keep a job diary.

Q. What do you call the job dairy—the "black book?" A. No.

Q. What is it?

A. In this case it was a little brown book, used for my convenience, more than anything else, showing the starting date of the project and the arrival of the various types of equipment on the project.

Q. Did you mark in there the date Duque &

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Frazzini completed construction of the first crusher plant, or the assembling of it?

A. No. I marked down the first date they started producing material.

Q. What was that date?

A. I don't recall at the moment.

Q. Would you say it was in February?

A. I presume it was in February, the latter part of February.

Q. Then as soon as you reached the job on February 7th did you start moving in and assembling what was called the Pioneer crusher plant?

A. No, not as soon as I arrived on the job. The Pioneer was parked near the pit. I can't be definite as to how long it stayed in that location before Duque & Frazzini requested that we start setting it up for them.

Q. Then you did not start setting the Pioneer plant up at or in the pit until you were requested to do so by Duque & Frazzini?

A. That's right.

Q. You are sure of that?

A. I am sure of that.

Q. Then it is not true that the Pioneer plant was constructed as a standby, just in case it was needed?

A. The Pioneer plant was hauled to Tucson, to be used as a standby in case they needed it. In other words, Basich Brothers had their transportation haul it down to Tucson to use as an emergency

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

machine in case the Duque & Frazzini equipment might fail them.

Q. Then was it erected on the job under that condition, as a standby or to be used—

A. It was erected on the job to be used.

Q. When did you start the erection of the Pioneer plant on that job?

A. I can't recall the date. But I will make another statement relative to that, and that is that Duque & Frazzini incorporated part of the second plant they set up with our Pioneer, to give them the necessary screening and storage capacity at the plant. Can we go off the record for a moment?

Mr. Monteleone: No. Just answer the questions.

Mr. McCall: Will you read that statement, please. I am not sure I got it all.

(The last answer was read by the reporter.)

Mr. Monteleone: Do you want to explain that answer?

The Witness: Yes.

Mr. Monteleone: You may do that.

The Witness: In other words, to obtain the type of plant they wanted and the segregation of the various sizes of rock that would be required, we didn't have sufficient bunkers or screening capacity on the Pioneer alone, so they used parts of this second plant they brought in for the purpose of making concrete aggregate, and they installed bunkers and screens and conveyors as they saw fit.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. (By Mr. McCall): How long was this after February 11th when you started installing the Pioneer?

A. I am sorry, but I can't recall the date.

Q. Do you remember when you completed the installation of the Pioneer plant?

A. I believe it was some time in March.

Q. Was it around March 25th?

A. I can't recall.

Q. Do you remember the first day the Pioneer plant produced material? A. No, I don't.

Q. Then you referred to the second plant installed by Duque & Frazzini. What was the name of that plant?

A. It was a plant made up of various trademarked machinery, under their supervision. It was a simple plant, consisting of bunkers, screens, and so forth, with electric motor drive. In other words, it wasn't a trademarked plant.

Q. What was it to produce?

A. Concrete aggregate.

Q. It did not crush rock? A. No.

Q. Is that the plant you call the sand plant?

A. No; that was a separate plant.

Q. Then was the one for concrete aggregate installed prior to the home-made rock crusher plant or afterwards? A. Afterwards.

Q. When was it installed?

A. Some time in March.

Q. Was it put on production prior to the be-

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

ginning of work by the Pioneer?           A. Yes, sir.

Q. How long did it operate?

A. About two or three days.

Q. And broke down?

A. No. They couldn't meet the specifications for the rock required on the project. They couldn't screen it clean enough to take the dirt and sand out of the rock.

Q. So that plant was abandoned, after two or three days' work; is that right?

A. That's right.

Q. So the only plant they had operating then, except the second plant that you just mentioned, was the home-made plant, up until the time the Pioneer plant started crushing rock?

A. Yes, sir.

Q. And the second plant you mentioned never did produce any material acceptable to the engineers?           A. That's right.

Q. Then, after the Pioneer plant started operation, was there another plant later on installed?

A. Yes, a plant for producing sand.

Q. And when was it installed?

A. I can't recall the date.

Q. In February or March?

A. It was March or——

Q. In March or April?           A. Yes.

Q. The latter part of March or April?

A. That's right.

Q. Who did it belong to?

A. Duque & Frazzini.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. So Duque & Frazzini owned te home-made rock crusher plant and the sand plant?

A. Yes, sir.

Q. Up to now you have spoken of the home-made rock crusher plant and the second plant, which, for all practical purposes, never did operate?

A. Yes.

Q. And the sand plant, which belonged to Duque & Frazzini, and the Pioneer plant, which belonged to Basich Brothers. A. Yes, sir.

Q. Was there another plant later installed on the job?

A. Yes, in the latter part of May or the first part of June.

Q. Who did it belong to? A. PDOC.

Q. What kind of a plant was it?

A. It was a Cedar Rapids.

Q. Under whose authority was it installed on the job? A. Basich Brothers.

Q. That was the latter part of May?

A. Or June, I believe.

Q. How long did it take to move it on the job and install it?

A. A matter of four or five days.

Q. That was done under your supervision?

A. Yes, sir. May we refer to Duque & Frazzini's rock crushers as "job assembled plants," rather than "home-made," due to the fact that the term "home-made" may be misleading, as meaning manufactured by Duque & Frazzini. In other words, it

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

was a plant composed of various types of equipment assembled on the job.

Q. You say you were at the pit every day from February 11th during the month of February?

A. Yes, sir.

Q. What kind of work were you superintending out there during that time?

A. The entire project, the production of material and all work performed on the airport itself.

Q. But at and around the pit what kind of work were you performing?

A. Supervising work relative to the necessary production of material.

Q. Can you recall the day that you first produced material at the pit?

A. I cannot, sir.

Q. Would you say that you produced material there before February 19th?

A. I don't recall. I believe it was after, after the 19th, the 19th or after before the first material came out.

Q. What kind of material was produced then?

A. Crushed rock base.

Q. That was the only material produced until when? A. Until some time in March.

Q. When the Pioneer plant—

A. When the Pioneer plant was set up.

Q. On the first day you operated do you remember how much material you produced?

A. No, sir.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. Did you make a note of it at the time, as to how much material was produced?

A. An approximate amount.

Q. How long has it been since you saw the record that you made that day?

A. About ten months.

Q. Did you make a record then of the approximate amount of material produced each day during February?

A. I didn't make a record each day, but I had men that kept records each and every day.

Q. Did this plant produce as much as 800 cubic yards per day during the month it operated, in February?

A. I can't recall, unless I refer to the records.

Q. Then your answer is that you do not know at this time—it may have produced 800 cubic yards or more per day during February?

A. At this time I can't state, unless I would refresh my memory by going over the records.

Q. During the month of March, prior to the beginning of production with the Pioneer plant, did you keep a record or have a record kept of the production each day?      A. Yes, sir.

Q. Do you remember how much it produced on any day during that time?      A. No, sir.

Q. Then it may have produced during February and March 800 or more cubic yards of material each day, as far as you can remember at this time?

A. I would have to check the records on that.



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. You have no independent recollection of the amount produced, at this time?

A. From independent recollection, I would say, I would assume it was under 800 tons per day average.

Q. Did you discuss this under-production at any time during February with Duque & Frazzini?

A. I don't believe I discussed the production with them on the rock base until some time in March.

Q. What time in March does that have reference to?

A. I can't recall the date. In other words, in assembling the plant there were a few minor corrections required on the plant which required a period of time, and until I knew they had made all the adjustments necessary on the plant I wouldn't press them for higher production.

Q. How long, approximately, did it take to make the necessary adjustments and corrections on the plant?

A. They made a small amount of corrections each and every evening on completion of the shift.

Q. Did they ever work the plant two shifts?

A. One shift.

Q. Eight hours?           A. Ten hours.

Q. Did they continue to make corrections as long as they operated the plant?

A. They did for a while, yes.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. How long did it take them to get the plant in first class condition, if ever?

A. That would depend on what a man calls "first class condition."

Q. Did they ever get it in what you call "first class condition?"

A. They had it in good running order for a short period.

Q. When it was in good running order do you believe it produced 800 yards per day?

A. On various dates it did produce 800 or over, on certain dates.

Q. Do you know Paul Albino?

A. Yes, sir.

Q. Was he already on the Basich job when you reached the job February 11th? A. Yes, sir.

Q. What kind of work was he doing?

A. He was a mechanic at the time—general assembly work.

Q. And later did he start to work for Duque & Frazzini? A. Yes, sir.

Q. What time was that?

A. I can't recall the date.

Q. Was it the same day you reached the job, February 11th? A. I doubt it.

Q. He was a mechanic for Basich when you reached the job on February 11th?

A. Yes, sir.

Q. And he had been for quite a while?

A. Yes; he was doing mechanical work at the

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

time. He normally was crusher operator and foreman.

Q. He had been a crusher operator and foreman before? A. That's right.

Q. Had he previously operated the Pioneer plant? A. That's right.

Q. And he assisted you on the installation of the Pioneer plant on the job?

A. He assisted Duque & Frazzini in the installation.

Q. After it was installed he operated it, or it was operated under his supervision?

A. That's right.

Q. You supervised the erection of the Pioneer plant, did you not? A. No, sir.

Q. You had nothing to do with the installation?

A. No, sir.

Q. And all of that was done by whom?

A. Duque & Frazzini.

Q. You were there every day during the time it was installed? A. Yes, sir.

Q. What did you do, then, if anything, with reference to the installation of the Pioneer plant?

A. Very little, other than that it be set up and operated by a certain date.

Q. What was that certain date?

A. I can't recall at the moment. In other words, we had a time schedule on the job, and in order to start paving operations on a certain date we had

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

to start crushing operations two or three days prior to that.

Q. When did the schedule start—when did the schedule call for starting paving on the job?

A. I can't recall without checking the records.

Q. Then the only thing you had to do with the installation or the operation of the Pioneer plant was to insist to Duque & Frazzini that they get it constructed and in operation at a certain time?

A. No; it wasn't a case of insisting, due to the fact that they were coming along on schedule with their installation.

Q. What time is this that you say they were coming along on schedule with their installation?

A. As I said before, I can't recall dates from memory between these particular operations.

Q. You refer to the schedule of the installation of the Pioneer plant, or of all of the equipment?

A. All of the equipment. At the same time I was installing a batch plant for combining our concrete aggregate at a location near the Pioneer crusher, I was also installing an asphalt plant across the street.

Q. What was this plant that you say you were installing or installed—for combining materials?

A. That's right.

Q. Where was that installed?

A. About 200 feet south and east of the Pioneer structure.

Q. That was in the pit?                   A. Yes, sir.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. What work did this plant perform?

A. It weighed and combined the proportions of rock and sand, the amount required in every batch of concrete.

Q. Then after it weighed and combined your rock and cement, what became of the rock and cement?

A. It was hauled to the airport on a truck and dumped into a cement mixer.

Q. A Basich truck?

A. A Basich truck or trucks rented by Basich Brothers.

Q. Then the asphalt plant, where do you say that was located?

A. Across the county road from the Pioneer crusher. In other words, the pit was split in two by a county road. We had Duque & Frazzini's rock crusher on the south, in the south pit, and the batch plant and the Pioneer and the sand plant in the north half of the pit.

Q. When did you first notice, if you ever did, that Duque & Frazzini were not producing the material which was required by their contract?

A. Oh, I would judge around the latter part of March.

Q. Up until that time you had not noticed that they were not producing material according to their contract?

A. Well, I may have noticed, but I may have been under the assumption that they would make

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

up their production either by double shifting or employing their machinery so that it would produce more per shift.

Q. Had you talked with them *it* prior to the latter part of March?

A. Yes, I believe I had.

Q. Where was that—out at the pit?

A. Out at the pit.

Q. Who was present at the time?

A. Well, I believe at one time there was a chap by the name of Mr. Mitchell. He was an office engineer of Basich Brothers Construction Company at that time.

Q. What was he doing at the pit?

A. He and I went out to measure the quantity of material in the stock pile.

Q. Do you recall the date?

A. No, I don't.

Q. What was said by you to Duque & Frazzini and what was said by them on that date with reference to being behind schedule with their equipment?

Mr. Monteleone: I don't think the witness stated that they were behind schedule at that time.

Mr. McCall: Well, he can state what he remembers.

The Witness: Mr. McCall asked whether or not I had any recollection of any discussion we may have had in the pit prior to the end of March, to which I answered that we had several discussions,

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

at which times Mr. Duque or Mr. Frazzini told us that they would either double-shift or make the necessary improvements to pick up the production. At that time I didn't consider it a serious matter, due to the fact that I took them at their word that they would make these necessary corrections and adjustments and pick up their schedule.

Q. Was that prior to the time you started the installation of the Pioneer plant?

A. That was about the time we were installing the Pioneer plant, or shortly after its installation.

Q. Do you recall what their production record was up to the time you discussed it with them and they said they would make the necessary corrections? A. I don't remember.

Q. Was there a time-keeper on the Duque & Frazzini job? A. Not that I know of.

Q. Did you have a time-keeper on the main job, the Basich job? A. Yes.

Q. What was his name?

A. Homer Thompson.

Q. Did he go out on the job and get the fellows' times, or did he just take it from someone in the office?

A. Each foreman turned in time cards, at the end of each and every day, covering all men working under his supervision. These time cards were signed by the men and approved by the foremen, and forwarded to our office. And Mr. Thompson also had an office force that assisted him in com-

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

piling all the necessary records for the payment of these people. In regard to Duque & Frazzini, Mr. Duque would bring in their time cards, and sometimes Mr. Frazzini, or sometimes the foreman they had; I believe his name was Hampton. In other words, they would turn in time cards for all men working under Duque & Frazzini.

Q. Then all the time cards turned in by Duque or Frazzini or Hampton would be signed by them, along with the signatures of the workmen?

A. I assume so.

Q. Do you know whether they were or not?

A. In most cases they were, yes, or by Mr. Albino.

Q. Then Mr. Albino signed the time cards of the workmen too, did he?      A. Yes.

Q. Workmen on the Duque & Frazzini job?

A. Yes. They were working under him on the Pioneer project. Mr. Albino had charge of the Pioneer.

Q. Then, Mr. Kovick, when a foreman on the subcontract job, or Duque and Frazzini, or the foreman on the Basich job, as the case might be, took a time card and had it signed by the workman and signed it himself, what did he do with it?

A. He, in turn, brought the time card to the office in person, or else sometimes I picked them up, or Mr. Thompson picked them up, and brought them to the office.



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. The office you refer to was the Basich Brothers Construction Company office, which was located on the project; is that right?

A. That's right.

Q. Then after they were brought to the office who were they turned over to?

A. Mr. Thompson.

Q. Mr. Thompson was in charge of that office?

A. Yes.

Q. As far as the bookkeeping was concerned?

A. Yes, sir.

Q. But all of it was under your supervision?

A. Yes, sir.

Q. Did he keep the records of the employes on the Duque & Frazzini job separate from the records of the employes on the main Basich job?

A. Yes, sir.

Q. How were the employes paid their wages or salaries—by check or cash?      A. By check.

Q. And those were Basich Brothers Construction Company checks?      A. Yes, sir.

Q. Then the employes on the Duque & Frazzini job did receive their checks at the Basich office, or were the checks brought to the pit?

A. The checks were generally brought to the pit and given to Mr. Frazzini or Mr. Hampton or Mr. Duque.

Q. The workmen's compensation, I believe, was carried by the State Fund, was it not?

A. Yes, sir, the State of Arizona.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. The employes on the Duque & Frazzini job were listed on the workmen's compensation of Basich Brothers?      A. Yes, sir.

Q. Was that by some agreement between Basich Brothers and Duque & Frazzini?

A. I assume they had something in the contract to cover that and advancing money for payrolls.

Mr. Monteleone: The contract speaks for itself. If you don't know what arrangements have been made, just simply state that you don't know of your own knowledge of any arrangement to that effect. The contract speaks for itself, and there is a provision in that regard, but you are not supposed to state that. That is for the court to determine, what the contract provides.

The Witness: Yes, sir.

Q. (By Mr. McCall): Then you do not know of any agreement between Duque & Frazzini and Basich Brothers, outside of the subcontract, with reference to paying the workmen of Duque & Frazzini on the Basich Brothers Construction Company compensation policy?      A. No, sir.

Q. Do you know how many times, if any, the State Fund auditors audited the payroll of Basich Brothers Construction Company and the Duque & Frazzini job while it was under construction?

A. Oh, quite a number of times.

Q. Do you know if they made a separate audit of the Duque & Frazzini employes, or if they

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

audited those along with the Basich Brothers Construction Company employes?

Mr. Monteleone: Do you know of your own knowledge?

A. No, I don't know whether they made it separate or—They made separate audits of all operations on the job, to break it down into proper classifications for the various rates of insurance which applied in each operation.

Q. (By Mr. McCall): Who determined the regular time and the overtime of each employe on the subcontract job?

A. The general specifications covering the work and also the various union crafts.

Q. Did they determine whether a man should work so many hours regular time and so many hours overtime, the same day?

A. That was up to the contractor.

Q. Do you remember when Duque & Frazzini first stockpiled material?

A. I can't recall the date, but I do have records of it.

Q. What was the occasion for stockpiling material—because your trucks were not able to haul it fast enough?

A. No, sir. It was a safety provision, to supply us with rock base when their plant was broke down.

Q. I believe you said you do have records showing how much material, or approximately how

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

much, was produced each day in February and March?      A. Yes, sir.

Q. And, for that matter, for the entire time that Duque & Frazzini were on the job?

A. Yes, sir. Our records—

Q. Do you know where those records are?

A. I believe they are in the Basich Brothers files.

Q. What is the name of those records?

A. The truck time sheets I believe would show the approximate quantities each day.

Q. Do you know whose supervision they are under?

A. They were under Mr. Thompson's supervision. These records we speak of were kept strictly for ourselves, for Basich Brothers, due to the fact that all payments made to Duque & Frazzini were paid on an in-place quantity. In other words, those were paid according to the engineer's estimates of materials on the air field, whereas we kept these records for our own convenience, mainly to cover the movement and operation of the trucks, and also for estimating amounts of material hauled to the airport by a certain date and the amount required to complete a certain section, but in reality they weren't for keeping the Duque & Frazzini production.

Q. Some of the material was paid for by the truck load, was it not?

A. By Duque & Frazzini?

Q. Yes.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

A. Yes, I believe there was some paid by the truck load.

Q. Do you know what material that was?

A. There was some type of rock base, a small amount or rock base, paid by truck loads.

Q. Is this Mr. Thompson working in the Basich office now?

A. At Oceanside, the field office.

Q. Where are the records now, if you know, which were kept for the Davis-Monthan Field?

A. I really wouldn't know where they are now.

Q. You don't know whether they are at the main office of Basich Brothers Construction Company or not?

A. I really couldn't say.

Mr. Monteleone: I again, Mr. McCall, reiterate the offer which I have made to you and your company on various occasions, that all the records of Basich Brothers Construction Company in connection with the Duque & Frazzini subcontract are open to your inspection and investigation at all reasonable times. If you care to send an auditor to the office where the records are being kept, they will be open to your auditor.

Mr. McCall: Where are the records?

Mr. Monteleone: They undoubtedly are at the main office in Alhambra. That would be the natural place for them to be. From general statements made to me, I assume they are there.

Mr. McCall: Then on notice of a day or so you would let an auditor that we may select, or someone,

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

or me, go over to the office and look over these records; is that right?

Mr. Monteleone: That offer has been made to you at all times. Make it a reasonable time, five or six days, or something like that—a few days ahead of time. Don't wait until the last day before the trial.

Q. (By Mr. McCall): I will ask you, Mr. Kovick, if you know, did Duque & Frazzini have in operation at any time on the subcontract job in question, two plants producing 800 cubic yards of suitable material per day?

Mr. Monteleone: You mean actually producing or capable of producing?

Mr. McCall: Actually producing.

The Witness: On any one specific day, or over a period of time?

Q. (By Mr. McCall): Any one specific day.

A. Well, as I stated before, one plant did produce over 800 tons per day, and I have reference to the small crusher plant we discussed previously. But I would have to check the records as to whether or not both plants operated on the same date and also whether both plants exceeded 800 tons per day on that date.

Q. Are you confused, Mr. Kovick, as between tons and cubic yards?      A. No, sir.

Q. Then the unit of measure they were to produce was tons, and not cubic yards?

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

A. No. It varied. They had cubic yards on the rock base and tons on their mineral aggregate for their asphalt material.

Q. Calling your attention to cubic yards of material only, are you prepared to say that they did not at any time have two plants producing a total of 1600 cubic yards per day?

A. I am not prepared to state.

Q. Do you know if they ever produced as much as 1600 cubic yards of suitable material per day between the 11th of February and the 8th of June, 1945?

A. I couldn't state unless I checked the records.

Mr. McCall: Mr. Monteleone, I believe you said you would let us look at those insurance policies, the compensation policies. Do you have them here?

Mr. Monteleone: If you are going to send a man over or are going over to the office, you can check them over at that time, see the whole thing, instead of handling it piecemeal.

Mr. McCall: I had understood that I could see them here at your office.

Mr. Monteleone: I didn't understand that. The question you had was as to whether or not those records stood in the name of Basich Brothers as employers, and when you prepared the admission of facts I told you then that they did stand in the name of Basich Brothers. In making that admission, however, I would not concede that Basich Brothers were, in law or in fact, the employers.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Mr. McCall: I understand now that the policies will not be brought down to your office for inspection?

Mr. Monteleone: If it is not too much inconvenience to Basich Brothers, I will have them brought down here, yes. I have no objection to that. I didn't understand that you wanted them here at the time of the taking of Mr. Kovick's deposition. How long will you be here, Mr. McCall? I have an appointment which will take probably ten or fifteen minutes.

Mr. McCall: If you have an appointment which you would like to take up for ten or fifteen minutes, go ahead.

(A fifteen-minute recess was taken.)

Q. (By Mr. McCall): What records do you have reference to that you would have to check in order to tell how much material per day was produced?

A. The daily truck time sheets, which carried a tabulation of the approximate amount of material produced each day, in other words, an estimate based on loose truck measure.

Q. Did you have any other records besides the truck time sheets that would show the amount, or the approximate amount, of material produced each day?

A. No, sir.

Q. Did the engineers ever prepare estimates



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

showing the amount of money due to Duque & Frazzini?

A. The Basich Brothers Construction Company engineers did, yes.

Q. The Basich Brothers Construction Company engineers prepared such estimates?      A. Yes.

Q. Did they give those to Duque & Frazzini?

A. Yes, sir.

Q. When did they give them the first estimate?

A. I don't recall the date.

Q. How often did they give an estimate after that?      A. Whenever requested.

Q. Did they ever request estimates?

A. I don't recall at present whether they did or not.

Q. Do you know whether or not the Basich Brothers Construction Company engineers ever gave Duque & Frazzini more than one estimate showing the amount of work done and what they had coming to them, if anything?

A. I believe so, yes.

Q. Just one time?

A. I believe they submitted estimates to them on several occasions.

Q. On several occasions?

A. Yes, sir. How many I couldn't state.

Q. Did you deliver those estimates to them?

A. As a rule they were picked up in our office by Mr. Duque or Mr. Frazzini.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. What records were the estimates of your engineers taken from?

A. The engineers' estimates, the U. S. Engineering Department, in charge of progress.

Q. The estimates of the U. S. Engineers did not mention Duque & Frazzini? A. No, sir.

Q. But the U. S. Engineers' estimates showed the work, so that you could segregate it, did they?

A. Yes, sir. It was simple to segregate, due to the fact that Duque & Frazzini supplied all the rock base and the material for the concrete that was poured, and all of the materials for the asphalt, those being the quantities we would credit them with on their estimates.

Q. Then during the months of February and March you talked to Duque & Frazzini about bringing up the deficiency in the amount of material, but they didn't increase the amount until the Pioneer plant started operating?

A. Well, that is rather difficult to answer. We discussed the increase in the production of their rock crusher making rock base, increasing it, but until the Pioneer was set up and operating, increasing it I had no reason to argue with them relative to their production of that machine.

Q. Then after the Pioneer machine started operating, do you know if they produced at any time 800 yards per day with the two machines, during the months of April or May?

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

A. Not without referring to the records.

Q. You wouldn't know?           A. No.

Q. They may have produced a total of 1600 yards of suitable material per day after the Pioneer machine started operating, but you don't remember?

A. That's right.

Q. But up until the Pioneer plant started operating they only had the one plant operating, which I referred to as the home-made plant; is that right?

A. Other than the several days their concrete aggregate plant operated and their materials couldn't meet specifications.

Q. Couldn't meet specifications?

A. That's right.

Q. Then did you have any conferences with Duque & Frazzini, complaining to them about the production between the 1st of April and the 15th of May?

A. Yes, we had several discussions in that period.

Q. Where did those discussions take place?

A. At the office and in the pit.

Q. At your office?

A. Yes, or in the pit.

Q. What was the nature of your complaint to Duque & Frazzini at that time?

A. To increase the production of materials.

Q. What was the production of materials when you complained?

A. I don't recall the exact yards per day that were being produced at the time.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. Do you remember writing two letters to Duque & Frazzini on May 12th?

A. I recall that I wrote them some letters. I wouldn't know the dates.

Mr. McCall: Mr. Monteleone, you have seen those letters before. Do you have any objection to my showing them to the witness? (Handing papers to Mr. Monteleone.)

Mr. Monteleone (Returning same papers to Mr. McCall): That is all right.

Q. (By Mr. McCall): I show you, Mr. Kovick, what purports to be two letters addressed by Basich Brothers Construction Company to Duque & Frazzini, dated May 12, 1945, at Tucson, Arizona, and ask you if you signed each of those letters?

A. Yes. This is my signature on both letters.

Q. While you look at those letters, Mr. Kovick, I call your attention——

Mr. Monteleone: By the way, Mr. McCall, are you offering those letters in evidence now?

Mr. McCall: No.

Mr. Monteleone: Then I am going to object to your calling attention to any portion of the letters, unless they are put in evidence.

Mr. McCall: I have already offered the letters in evidence. They were marked at the pre-trial.

Mr. Monteleone: Pardon me.

Mr. McCall: They are already in evidence.

Mr. Monteleone: All right. These are the same

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

letters, then, that were referred to in the deposition of N. L. Basich?

Mr. McCall: That's right.

Q. (By Mr. McCall): Can you state which one of these letters was written first on May 12th, Mr. Kovick?

A. I believe this letter was written first of all.

Q. Referring to the letter beginning with what words?

A. "In your letter of May 8, 1945."

Q. That was the first letter written on May 12th?

A. Yes.

Q. That letter you refer to reads, in part: "Since you lack proper and adequate equipment to operate even on a single shift basis without breakdowns, we suggest that any materials made on a night shift be placed in stockpile from which we will reload at our expense." What equipment did Duque & Frazzini have on the job when you wrote this letter of May 12, 1945?

A. This letter had reference to their rock base crushing plant.

Q. The one that was referred to as beginning work first?

A. In the letter of May 8th, they were feeding the plant with a yard and a quarter shovel and a tractor, the combination of the two, and they were using this job-constructed plant, crushing plant, the home-made plant which has been referred to.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. Is that the only one they had in operation?

A. No. We had the Pioneer in operation at that time.

Q. This letter, then, had no reference to the Pioneer plant?

A. No. This first letter here had reference to the rock base plant.

Q. Which was the job-constructed plant?

A. Yes. If you will notice, on the bottom it does say: "The above statement regarding lack of proper equipment can be verified from our daily production records of rock base deliveries from your plant." In other words, this referred to rock base alone.

Q. Those daily production records referred to in the last paragraph, what kind of records do those refer to?

A. Time sheets showing the working time of the crusher during the day, the time it starts and the time of every breakdown, and the time it starts again and the time it stops for the evening.

Q. Who kept that record?           A. Our man.

Q. What man?           A. The truck checker.

Q. What became of those records?

A. They are part of the records that Mr. Monteleone discussed, which may be up at our office.

Q. How far do those records go back?

A. To the beginning of the job.

Q. And those records will show the daily time, hours, that the machine referred to as the "job-constructed machine" worked, from the beginning of

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

the job, as long as Duque & Frazzini were there?

A. Yes, sir.

Q. They also show the time worked by the other plants, including the Pioneer; is that right?

A. No. We didn't make a break-down on the Pioneer in that respect, due to the fact that the Pioneer production was going directly into the stock-pile, rather than on the grade, and our means of checking the production there was by the number of cubic yards placed on the grade.

Q. So you didn't keep any records of the time worked by the Pioneer?

A. Not like on the home-constructed machine.

Q. Does this record show how much crushed rock was produced by this home-constructed machine each day?

A. How many loads, yes.

Q. Each day? A. Yes, sir.

Q. How much was supposed to be in each load?

A. We had a segregation of large trucks and small trucks, and we estimated the amount we thought each truck would hold.

Q. Did you ever check that estimate with the engineers' figures in place?

A. Yes, sir.

Q. How did they compare?

A. We were heavy on the figures, on the truck figures. In other words, the shrinkage of the material was greater than we figured it would be.

Q. Do you remember the percentage the shrinkage ran to?

A. No, sir, I don't recall.

## Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. Calling your attention to the other letter which was written on the same day, May 12th, which begins, "In spite of our verbal requests, letters and further requesting your Bonding Company representative to investigate conditions relating to your production of materials, we have received no improvement whatever on your material deliveries," what material deliveries did you have reference to?

A. All materials.

Q. Of every kind?

A. Yes; sand, concrete aggregate, mineral and crushed rock base.

Q. What was the status of the material deliveries when you wrote this letter?

A. We were forced to shut down our concrete paving operations on that date, due to the fact that the job-constructed plant couldn't produce sufficient rock base for us to prepare sub-grades ahead of concrete paving operations.

Q. How long did it stay shut down?

A. I would have to check the records for that.

Q. Had your concrete paving operations been shut down at any time before May 12th for lack of material?

Q. I would have to check the records for that. It was shut down due to lack of material. On which date, I can't recall.

Q. Do you remember how many times it was shut



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

down due to lack of material from the subcontractor prior to May 12, 1945?

A. No, sir, I couldn't say.

Q. Would you say it was a dozen times, or more or less?      A. I couldn't tell you.

Q. It might have been a dozen times, or more or less?

A. I would have to check the records for that.

Q. From your independent recollection at this time, you wouldn't know how many times?

A. I can hardly give an independent recollection if I am not certain.

Q. What do you mean by "standby charges resulting from this lay off," referred to in the last paragraph of your letter?

A. The rental of the various types of equipment, rented by the month, for the various operations, such as concrete paving, which includes your concrete mixers and finishing machines.

Q. That was on the main job?      A. Yes.

Q. On the air field?

A. In other words, all equipment that was tied up due to their lack of material, due to the machinery.

Q. And you charged all of that to Duque & Frazzini?

A. I presume we did. Mr. Thompson will remember.

Q. Do you remember the first time you had to

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

shut down your operations for lack of material furnished by Duque & Frazzini?

A. No, sir.

Q. Do you know of your own knowledge how much material the Pioneer plant produced after it started operating?

A. Not to an exact amount, no, sir.

Q. What did you refer to when you stated, in part, "you lack proper and adequate equipment?"

A. They lacked the proper equipment to strip their pits and remove the over-burden. By "over-burden" we refer to the dirt laying on top of the rock deposits. They lacked sufficient trucks to feed their plant properly, and their crusher was gradually becoming run down, to a point where it was continuously breaking down during each and every shift.

Q. And taking off this dirt from the pit is what you call stripping the pit?      A. Yes, sir.

Q. What did they do with the dirt that was taken off?

A. They put it in other parts of the pit, wasted it within the pit limits.

Q. That is the only thing you had reference to when you referred to "proper and adequate equipment?"

A. That's right. In other words, a piece of machinery that can't operate and produce is an inadequate piece of machinery.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. You were not referring to the crusher itself, then?

A. The crusher itself, plus the auxiliary equipment that was assisting it to produce the rock.

Mr. Monteleone: The two letters to which counsel referred, as I understand from his associate, were merely marked as exhibits, rather than being introduced in evidence, and at this time I am going to request that the letters be introduced in evidence and handed to the reporter, to become a part of the deposition of Mr. Basich or that of George Kovick.

Mr. McCall: No objection.

(A letter on the letterhead of Basich Brothers Construction Co., dated May 12, 1945, addressed to Duque & Frazzini, signed Basich Brothers Construction Co., by George W. Kovick, was marked by the Notary Public as "Defendants Ex. A to deposition of George W. Kovick. July 17, 1946. C. W. McClain, Notary Public," and is hereto annexed.)

(A letter on the letterhead of Basich Brothers Construction Co., dated May 12, 1945, addressed to Duque & Frazzini, signed Basich Brothers Construction Co., by George W. Kovick, was marked by the Notary Public as "Defendants Ex. B to deposition of George W. Kovick, July 17, 1946. C. W. McClain, Notary Public," and is hereto annexed.)

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. (By Mr. McCall): Mr. Kovick, did you receive a letter addressed to Basich Brothers Construction Company by Duque & Frazzini, dated May 19, 1945, in which they stated, in effect, that you had given instructions contrary to instructions they gave their men, and that the men followed your instructions?

Mr. Monteleone: At this time, out of fairness to the witness, I suggest that counsel hand the witness the letter he has in his hand, to which he is referring, so that the witness may refresh his memory from it.

Mr. McCall: May it be stipulated, then, that this is a copy of the original letter, Mr. Monteleone?

Mr. Monteleone: If you state that it is, I will take your word for it.

Mr. McCall: I have never seen the original, naturally.

Mr. Monteleone: I think we stipulated the same thing in the N. L. Basich deposition.

Mr. McCall: I am quite sure that is the record.

Mr. Monteleone: If that is the record, I will so stipulate.

Q. (By Mr. McCall): I will ask you if you remember receiving the original of that letter?

A. I recall receiving a letter similar to this. Whether it is an exact duplicate or not I wouldn't vouch for.

Q. Do you remember the incident mentioned in that letter, when, on Saturday, May 19th, Duque &

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Frazzini issued orders that the Pioneer crushing plant be shut down at 9:30 a.m. until Monday morning at 7:30? Were you on the job at that time?      A. Yes, sir.

Q. Who issued the order to shut the plant down?

A. Mr. Frazzini.

Q. Was he on the job at the time?

A. He was in the pit that morning.

Q. And both you and Mr. Albino were there?

A. No. I was not at the pit at the time he issued that order.

Q. What time did the order come to your attention?

A. Mr. Albino drove from the pit to the airport and notified me of Mr. Frazzini's decision.

Q. What time of day was that?

A. Oh, I presume it was about 10 o'clock.

Q. Do you remember that being Saturday?

A. No, sir, I don't recall whether it was Saturday or not.

Q. Did you then go with Mr. Albino to the pit?

A. Yes, sir.

Q. What time did you get to the pit?

A. I can't recall the exact hour we arrived at the pit. It was shortly after Mr. Albino notified me.

Mr. Monteleone: Mr. Kovick, you stated 10 o'clock. Was that 10 o'clock in the morning?

A. Yes.

Q. Had the Pioneer plant shut down already when you got there?      A. Yes, sir.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. Were the men gone?           A. No, sir.

Q. Did you speak to Mr. Frazzini when you reached the job?

A. Mr. Frazzini left the job.

Q. He was not there when you arrived?

A. Was not there. So I instructed the men to stand by until I could contact Mr. Frazzini, so that, in case he changed his mind, we could still start the plant again without too great a loss of time.

Q. Did you contact Mr. Frazzini?

A. I did.

Q. What time was that?

A. I can't recall. It was in the same space of time after I returned to the pit.

Q. Did he come to the pit then?

A. No, he did not.

Q. Did you then give instructions to the men to continue work?           A. Yes, sir.

Q. And they did continue work?

A. Yes, sir.

Q. When you contacted Mr. Frazzini what did you state to him and what did he say to you?

A. I stated to him that we were out of material at our batching plant, that unless that machine was kept running we would be forced to shut down before the shift was off.

Q. What did he say?

A. Mr. Frazzini stated that he didn't care what we had to do, that he was running the rock end

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

there, and when he would say to shut down, he could shut down.

Q. What did you tell him?

A. I told him I would continue running the plant until I could contact Mr. Basich.

Q. The men did stay on at work, then?

A. Yes, sir.

Q. Was that the first time that there was any conflict between Basich Brothers Construction Company and Duque & Frazzini as to who *what* authority to order the men to work or stop work?

A. Yes. We had requested that they work longer hours, on previous occasions, although if they didn't feel that they wanted to they could use their own judgment.

Mr. Monteleone: When you say "they," you mean whom?

A. Duque & Frazzini.

Q. (By Mr. McCall): The condition that you complained of in the letter of May 12th, 1945, had existed how long before May 12th?

A. Oh, I assume it existed during the month of April.

Q. Had it existed during the month of March?

A. To a very small degree.

Q. Had it existed during the month of February?

A. To a small degree, yes.

Q. What part of the complaint had existed during the months of February and March?

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

A. Well, there was very little in February, due to the fact that the main operations were setting up the plant, and in March, after the plant came under production, we offered suggestions on various methods of stepping up production, which were suggestions only.

Q. Was the subcontract bond in this case delivered to you in Arizona by Frazzini?

A. I believe so.

Q. Did you see Frazzini sign it?

A. I don't recall.

Q. Do you remember what date that was?

A. No, sir.

Q. Where were you when he handed it to you?

A. In my office in Tucson.

Q. What did you do with it?

A. Mailed it to our L. A. office.

Q. In Alhambra?

A. Yes, the Alhambra office.

Q. You don't remember what date that was?

A. No, sir.

Q. Do you remember the date that Duque & Frazzini did the last work on the subcontract or at the pit?      A. No, sir.

Q. Did Basich Brothers Construction Company move a plant into the pit the latter part of May or about June 1st?

A. In that neighborhood, yes.

Q. And was that at the request of Duque & Frazzini?



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

A. Yes. We had a verbal agreement with Duque & Frazzini that they would rent this plant, and then they backed down on it.

Q. Who did the plant belong to?

A. PDOC, at Tucson.

Q. After they backed down on renting the plant did Basich Brothers Construction Company move it on the job?

A. PDOC moved it on the job at our request. PDOC set it up.

Q. What part of the pit was it set up in?

A. It was set up in the south pit, approximately 700 or 800 feet from Duque & Frazzini's home-constructed or job-constructed crusher.

Q. When did the PDOC plant start operating?

A. I can't recall the date.

Q. Did you use the same employees to operate that that he already had in the pit on other machinery?      A. No, sir.

Q. You got new employes entirely?

A. PDOC furnished the crew. They operated it for so much a yard.

Q. Did Duque & Frazzini complain about your moving in this plant?

A. Other than that letter, the letter——

Q. How long after this PDOC plant started producing material before Duque & Frazzini left the job?

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

A. They started dismantling their equipment immediately afterwards.

Q. Were you there when they left?

A. Yes, sir.

Q. At the pit?           A. Yes, sir.

Q. Did you immediately take over the job?

A. Yes. I had to.

Q. You took it over immediately after they left, and you were in charge of it until it was completed?

A. Yes, sir.

Q. You took over the same employes, workmen and machinery; is that right?

A. Yes, sir, other than a tractor belonging to Duque Frazzini and some of his employes that were working on these two plants he pulled down, and they left about that time.

Q. Do you remember when the last of the sub-contract work was done?           A. No, sir.

Q. There was no stoppage, then, of the subcontract work or the work in the pit between the time that Duque & Frazzini left the job and the time you took over for the Basich Brothers Construction Company?

Mr. Monteleone: I object to the phrase "you took over for Basich Brothers Construction Company," as a conclusion on the part of this witness. He can testify what actually transpired, but whether he took it over for Basich Brothers Construction Company or took it over for the benefit of Duque & Frazzini is a question of law, and not a question for

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

this witness to answer. I object to the form of the question.

Q. (By Mr. McCall): I will ask, you, Mr. Kovick, what time of day did Duque & Frazzini leave the job?

A. They didn't leave immediately after we began production. They were around the job for a week or approximately two weeks, but they were dismantling their equipment and making arrangements for shipping it out. They were in and out of the pit for a period of time after they ceased operations.

Q. Do you remember the day they ceased operations?      A. No, sir.

Q. What record, if any, do you have or did you make that shows the line of demarcation, if any, between the time that Duque & Frazzini were there and the time after they had gone?

A. We kept a record, the same as we did previous to the time they left. There was a demarcation, due to the fact that they wrote us a letter and pulled off the job, and all work done after that was done, shall I say, under my immediate supervision, rather than theirs.

Q. Outside of that, there was no change in the way the records were kept?      A. No, sir.

Q. You had charge of all the equipment which was rented by Basich Brothers to Duque & Frazzini, both fully operated and partly operated?

A. Yes, sir.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. Who determined the difference between the equipment which was partly operated and that which was fully operated?

A. Duque & Frazzini and myself.

Q. How often did you hand in to the office, if at all, statements showing the machinery that was fully operated and that which was partly operated?

A. Every night.

Q. Then what did you mean by "equipment fully operated?"

A. Where we supply the machine, plus the operator, we supply the machine operator and the fuel and maintenance.

Q. And everything necessary towards the maintenance of the equipment?      A. That's right.

Q. And then "partly operated" would mean when you furnish the machine, and what else?

A. As a rule they were fully operated or leased to them on a monthly basis, whereby they supplied the operator, the fuel and the maintenance of the machine.

Q. Then when you rented or leased from PDOC or someone else for Duque & Frazzini, on whose authority did you rent that equipment?

A. Mr. Frazzini's.

Q. What form did that authority take?

A. Verbal, as a rule. In most cases he arranged for the equipment, but due to the fact that he was a new contractor in Arizona they wouldn't extend him any credit. Therefore the equipment was

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

arranged for by him, but rented through Basich Brothers Construction Company, whereby the renter would be assured payment.

Q. Then you would say the lease of the equipment, the rent, is in the name of Basich Brothers Construction Company?      A. Yes, sir.

Q. You stand good for the price?

A. Yes, sir. And——

Mr. Monteleone: Were you going to say something else?

The Witness: That was all.

Q. (By Mr. McCall): That was done in each and every case where machinery or equipment was rented from someone other than Basich Brothers Construction Company?      A. That's right.

Q. Did you ever have any authority in writing from Frazzini or Duque to rent equipment?

A. No, sir.

Q. Did you ever have any authority in writing from Duque & Frazzini to rent equipment from Basich Brothers Construction Company?

A. No, sir, other than verbal orders requesting the machinery.

Q. Then who kept the time for the machinery that was rented and charged to Duque & Frazzini by Basich Brothers Construction Company?

A. As a rule, our operators and their foremen.

Mr. Monteleone: When you say "our," you mean Duque & Frazzini?

A. Duque & Frazzini foremen.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. (By Mr. McCall): Was there a card kept on each piece of equipment that was fully operating?

A. Yes, sir.

Q. And that card was issued by the foreman and the operator of the equipment?

A. In some cases it wasn't, because on all plants that were rented by the month we didn't require a daily report of time, due to the fact that it ran from one part of a month to the same part of the next month, and that constituted a month's rental.

Q. On the equipment that was not rented by the month, then, would the foreman and the operator sign a card each day?

A. That was the usual procedure.

Q. Then on equipment rented from PDOC or anyone else, where the equipment did not belong to your company, Basich Brothers Construction Company, did the foreman and the operator sign a card each day?

A. Generally the operator representing the other firm would request Duque & Frazzini's foreman to submit each and every daily time sheet to them.

Q. Did they okay each and every daily time sheet?

A. I presume they did.

Q. Calling your attention to Article 10 of the alleged subcontract, which reads as follows: "In the event any controversies should arise, the contractor and the subcontractor each will elect a representative, and the representatives will in turn elect a third disinterested party, to settle contro-

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

versies. All decisions will be final." Were any controversies, during the course of the job, settled in this manner by Duque & Frazzini and Basich Brothers Construction Company?

Mr. Monteleone: I object to the question. There is no evidence that there were any controversies between them.

Mr. McCall: He can answer. He knows whether there were any controversies between them.

Mr. Monteleone: There were no controversies at all, as I understand from the evidence. If you indicate that there were any controversies, indicate what you are referring to, what particular controversy you are referring to. The question is general and broad, and from the evidence there is no indication that there were any controversies between the parties, or any dispute or misunderstanding between the parties.

Mr. McCall: I think the letter of May 12th, which reads, in part, "In spite of our verbal requests, letters and further requesting your Bonding Company representative to investigate conditions relating to your production of materials, we have received no improvement whatever on your material deliveries." I think that would—

Mr. Monteleone: There is no controversy about that fact. There was no divergence of opinion, as far as the parties involved were concerned, nothing to arbitrate.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. (By Mr. McCall): I will ask you, Mr. Kovick, did you ever have any dispute or controversy with Duque & Frazzini regarding the production of material while they were on the alleged subcontract job?

A. I have had quite a number of discussions with them; you can't call them controversies, because in most cases they would agree to make the necessary improvements, and that is as far as it would go.

Q. But they never would make the necessary improvements—is that what you mean?

A. In certain cases they would, and in other cases they would just ignore my request, and, that being a subcontract, I would just have to let them do as they saw fit.

Mr. McCall: That is all the questions I can think of. Any questions, Mr. Monteleone?

Mr. Monteleone: Yes, I am going to ask a few questions.

#### Cross-Examination

By Mr. Monteleone:

Q. Mr. Kovick, you spoke of the records kept by Basich Brothers as to the quantity of material produced by Duque & Frazzini, and in your answer, if I understood you correctly, you said those records were determined by truck loads?

A. No. The quantities for Duque & Frazzini



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

were determined by the U. S. Engineering Department.

Q. I mean your own records?

A. Yes, sir.

Q. Did you have any records of any material that was produced by Duque & Frazzini and stockpiled, before they were removed by Basich Brothers and their trucks?

A. We had stockpile materials, yes.

Q. Did you have any records of the quantity of materials stockpiled, before they were loaded on your trucks and removed?

Mr. McCall: I object, as having been asked and answered.

Mr. Monteleone: No, I don't believe it has. If I understand correctly, there were a great many cases where Duque & Frazzini produced material which was stockpiled before it was taken up by Basich Brothers. Is that correct?

A. Yes, in some instances.

Q. You didn't have any records as to the quantity of material stockpiled, before it was loaded on your trucks, did you?

A. No. As a rule, we would try to estimate that and then count it out as we would remove it in the trucks and haul it to the grade. In other words, the stockpiling was done by Duque & Frazzini's trucks, and they would haul it from the crusher to the stockpile and dump it, and then, when we would

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

load it and haul out, we would check the loans with the records you were referring to, Basich Brothers' records.

Q. Were these records kept by Basich Brothers?

A. An employe of Basich Brothers.

Q. And records kept by Basich Brothers or any employe, are under your general supervision?

A. Yes, sir.

Q. And they were so kept, in the ordinary course of the job? A. Yes, sir.

Q. Both as to the quantities of material removed and as to the payroll of Duque & Frazzini, and as to the rental of equipment by Duque & Frazzini, were they all kept in the ordinary course of business?

A. We kept records on all of that, yes.

Q. From your experience and your knowledge of the contract and what you observed, would you state that those records correctly portray the actual condition as it existed? A. Yes, sir.

Q. And the rentals of the equipments were the fair rentals of equipments; is that correct?

A. Yes, sir.

Mr. McCall: I object to that as being irrelevant and immaterial, as to the fair rental of the equipment, and not sufficient foundation laid.

Q. (By Mr. Monteleone): Would you state that those equipments were actually used by Duque & Frazzini? A. Yes, sir.

Q. And would you state that the payroll of the

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

men, as indicated by your records, as you have testified, truly reflects the employment by Duque & Frazzini on this particular job?

A. Yes, they do. May I add one more thing, off the record?

Mr. Monteleone: This is off the record.

(There was a discussion off the record.)

Q. (By Mr. Monteleone): As far as the rentals of equipment were concerned, the rentals were based upon what?

A. In certain instances they were based by the month, or by the hour, or by the yard.

Q. Were the rates fixed by the O.P.A.?

A. The rates were fixed by the O.P.A.

Q. And those rates fixed by the O.P.A. were the rates reflected in your records; is that right?

A. Yes, sir.

Q. Were the records of the time of operation of the plant and shut-downs kept in the ordinary course of business and under your general supervision?

A. Yes, sir, the same as any other job.

Q. Counsel asked you a question as to whether or not you had taken over the job after Duque & Frazzini shut down the early part of June, 1945, and you gave an answer that you had to take over the job at that time. What did you mean by that?

A. I had to take over the production of materials at that time.

Q. Why was that?

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

A. So as to keep our job in operation, the entire job, the entire project.

Q. That was a defense job or project?

A. Yes.

Q. What was the name of that job?

A. It was a B-29 training base.

Q. Was that B-29 training base—

A. A B-29 bomber squadron training base.

Q. Were you instructed by any representative of the United States Government to see that work was not shut down?

A. I was constantly reminded of that by the Government, its representatives.

Q. When you state you had to take over the job, you had to take it over because it was abandoned by Duque & Frazzini; is that correct?

A. Yes.

Q. And you had to do that in order to continue the construction of this important war project; isn't that true?

A. Yes, sir.

Mr. Monteleone: That is all.

#### Redirect Examination

By Mr. McCall:

Q. Mr. Kovick, in answer to a question of Mr. Monteleone's, you stated you were constantly reminded by the Government and its representatives. What do you mean by "the Government and its representatives"?

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

A. The U. S. Engineering Department and its representative, the resident engineer on the project, and the Colonel in charge of the air port.

Q. What did they remind you of?

A. That we had a schedule to meet, that our operations could not at any time interfere with their training program.

Q. And that is the reason that you took over immediately after Duque & Frazzini left, and completed it?

A. Yes, sir; otherwise I could have waited six months until the thing was settled.

Mr. McCall: That is all.

#### Recross-Examination

By Mr. Monteleone:

Q. Did Duque & Frazzini ever request that any of these matters be determined by arbitration?

A. No, sir.

Mr. Monteleone: That is all.

The Witness: You are speaking of me personally?

Mr. Monteleone: Yes.

The Witness: Yes. I wouldn't know whether they requested the company. They didn't request me

#### Redirect Examination

By Mr. McCall:

Q. Was there ever a time when Basich Brothers ever suggested to Duque & Frazzini the arbitrating of their differences?

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Mr. Monteleone: There is no evidence that there were any matters subject to controversy.

Mr. McCall: You raised the point, Mr. Monteleone.

A. To my knowledge there wasn't.

Q. (By Mr. McCall): As I understand, all the equipment which you have charged to Duque & Frazzini, both owned by Basich Brothers and owned by others, was charged out by your office on the O.P.A. schedule only?      A. Yes, sir, or less.

Q. Whether it be fully operated or partly operated?

A. Under their set schedule, for all purposes.

Q. Who do you mean by "their"?

A. The O.P.A.

Q. And you followed those schedules?

A. Yes, sir.

Q. In all cases?      A. In all cases.

Mr. McCall: Thank you.

Mr. Monteleone: This witness is leaving for Fresno tonight, and I don't know when he will be back. Do you have any idea when you are coming back?

The Witness: I haven't the slightest idea.

Mr. Monteleone: Can the original deposition be sent to Fresno and be signed before some duly authorized officer there? Are you willing to stipulate, Mr. McCall, that the deposition may be read and corrected by the witness and signed before

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

some notary public in the County of Fresno, in order to accommodate the witness?

Mr. McCall: Yes. And the notary before whom it is signed will be requested to send it direct to Mr. McClain for filing.

Mr. Monteleone: That is correct. May the record also show that, in referring to a "Bonding Company representative" in his letter, that I am referring to the latter dated May 12, 1945? I am going to ask this witness this particular question.

#### Recross-Examination

By Mr. Monteleone:

Q. Did you yourself interview any bonding company representative?      A. On the project, yes.

Q. Who was the man?      A. Mr. Bray.

Q. Do you recall when you saw him at the project?      A. No, I can't recall the date.

Q. Do you know whether you saw him on more than one occasion?      A. Yes.

Q. On how many different occasions?

A. I wouldn't know the number of occasions, but he was down there several times.

Q. Was he there during the month of May, would you state?      A. I believe he was.

Q. And was he there during the month of June, 1945?      A. I don't recall.

Q. Well, he had been there on occasions following the 5th day of April, 1945?      A. Yes, sir.

Q. Did he ever tell you that the company had

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

never been notified of any of the conditions existing at the plant? Did he ever make any objections of that kind to you, that you know of?

A. Yes, we had a discussion on that order.

Q. What is that?

A. I say we had a discussion on that order.

Q. What discussion did you have?

A. Well, relative to the type and condition of plants.

Q. Did he tell you whether or not he would use his good offices to try to rectify that condition?

A. Yes, sir.

Q. What did he say in that respect?

Mr. McCall: I object to that as a leading question, and as irrelevant and immaterial.

Mr. Monteleone: It is not. It bears on the waiver.

Q. (By Mr. Monteleone): What did he state in that respect, do you recall?

A. We covered so many subjects that I don't recall any specific statement.

Q. State generally what was said by Mr. Bray, the representative of the bonding company.

A. The general improvement of the equipment and workmanship of Duque & Frazzini, to bring up the production the required amount.

Q. Do you recall when those statements were made? A. No, sir.

Mr. Monteleone: Mr. McCall, have you any ob-



Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

jection if I take the deposition of Mr. Bray within the near future?

Mr. McCall: None at all.

Mr. Monteleone: May I notify you, then, when that will be done?

Mr. McCall: All right. One more question.

Redirect Examination

By Mr. McCall:

Q. Mr. Kovick, you say that Mr. Bray was on the job at Tucson several times while you were there?

A. Yes, sir.

Q. Would you say he was there more than twice?

A. I wouldn't swear to it.

Q. By "several" what do you have reference to?

A. Two, or possibly more, but I am sure it was two times.

Q. Where was this conversation between you and Mr. Bray at the time he indicated or said that he would do something about bringing up the production of Duque & Frazzini?

A. In Basich Brothers' field office at Tucson.

Q. Did I understand you correctly to state that he told you that he would do something to bring up the production?

A. We were speaking of generalities, and he said he would use his good offices to improve conditions.

Q. Did he say what conditions he had reference to?

A. No. The conditions we all had reference to

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

was the lack of sufficient material to keep our project in operation.

Q. What time was it that you first talked to him about it?

A. On his first trip down there.

Q. Was that in February, March or April or—

A. I don't recall the date.

Q. But he stated that he would use his good offices in getting them to bring up the production?

A. Yes, sir.

Q. Did you tell him what the production was at that time?      A. Yes, sir.

Q. What was it?

A. We went all through the records. I don't recall at the moment, but we had all the records at the office at the time, and we went over the day by day records, and then we also checked with our office engineer relative to the daily quantities and estimates up to that date.

Q. That was on what trip?

A. If I recall, that was on the first trip.

Q. Did you go with him to the pit?

A. Yes, sir.

Q. Did you have a further discussion at the pit?

A. Yes. I took him out to the pit and showed him all the equipment.

Q. What did he do, if anything, in using his good offices to bring up the production?

A. I didn't see any outward improvement.

Q. Did he tell you anything else?

A. Not that I can remember at the moment.

Plaintiff's Exhibit No. 22—(Continued)

(Deposition of George W. Kovick.)

Q. Then he was down there another time?

A. Yes, sir.

Q. Did you talk to him at that time about improvement?

A. I talked to him both times he was there, yes.

Q. That was the time that I was with him, was it not?

A. Yes, I believe so.

Q. All the talking you did to him at that time was when we were all three together, wasn't it, together with Mr. Monteleone and Mr. Basich?

A. Yes, sir.

Mr. McCall: That is all.

#### Recross-Examination

By Mr. Monteleone:

Q. On the first occasion Mr. Bray visited the pit and was going over your records, was Mr. N. L. Basich along also, do you recall?

A. I don't recall.

Q. How much time did he spend in your office going over the records?

A. Oh, I would judge he spent a good part of one afternoon.

Q. Did you have available to him at that time the payroll records of Duque & Frazzini?

A. All records.

Q. Including the rental records of equipment?

A. They weren't up to date, but we requested that our office manager prepare all Duque & Frazzini charges up to the close of that period for Mr. Bray.

Plaintiff's Exhibit No. 22—(Continued)  
(Deposition of George W. Kovick.)

Q. Were they exhibited to Mr. Bray?

A. Yes, sir, at a later date.

Q. Were also the amount of production or amount earned by Duque & Frazzini records shown to Mr. Bray?      A. Yes, sir.

Q. By yourself?

A. All records were open to Mr. Bray.

Mr. Monteleone: That is all.

Mr. McCall: Nothing further.

Q. (By Mr. Monteleone): Did Mr. Bray make any objection as to the records?

A. No, sir.

Q. Or question any of the records?

A. No, sir.

Mr. Monteleone: That is all.

Mr. McCall: Thank you, Mr. Kovick.

GEORGE W. KOVICK.

Subscribed and sworn to before me this 6th day of August, 1946.

[Seal]                      CECILE R. GEARHART,  
Notary Public in and for the County of Fresno,  
State of California.

State of California,  
County of Los Angeles—ss.

I, C. W. McClain, a Notary Public within and for the county and state aforesaid, duly commissioned and qualified, authorized to administer oaths and to take and certify depositions, do hereby certify that

Plaintiff's Exhibit No. 22—(Continued)

the witness named in the foregoing deposition, to-wit, George W. Kovick, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, before the commencement of his deposition; that said deposition was taken pursuant to the annexed Stipulation to Take Deposition, at the time and place set forth therein and in the title page hereof, and was completed on the same day.

I further certify that the testimony given by the said witness was by me reduced to writing in the presence of the witness by means of shorthand; that the said shorthand notes were subsequently transcribed in the absence of the witness; that it was stipulated by and between counsel for the respective parties that the original transcript of the said deposition may be sent to the witness for reading, correction, if necessary, and signing before any Notary Public in and for Fresno County, California, at his address in that city, to-wit, 145 West Shields Avenue, and that, after signing the said deposition, the same will be returned to me for filing.

I further certify that I am not a relative or employe or attorney or counsel of any of the parties, or a relative or employe of such attorney or counsel, or financially interested in this action.

In Witness Whereof, I have hereunto set my hand and affixed my seal, at Los Angeles, California, this 24th day of July, 1946.

[Seal] /s/ C. W. McCLAIN,

Notary Public in and for the County of Los Angeles,  
State of California.

Plaintiff's Exhibit No. 22—(Continued)

## DEFENDANTS' EXHIBIT A

to Deposition of George W. Kovick

[Letterhead Basich Brothers Construction Co.]

P. O. Box 5416  
Tucson, Arizona  
May 12, 1945

Duque & Frazzini  
P. O. Box 5416  
Tucson, Arizona

Gentlemen,

In your letter of May 8, 1945 you state you desire to start a night shift to produce additional base materials. Since you lack proper and adequate equipment to operate even on a single shift basis without breakdowns, we suggest that any materials made on a night shift be placed in stockpile from which we will reload at our expense.

The above statement regarding lack of proper equipment can be verified from our daily production records of rock base deliveries from your plant.

Yours very truly

BASICH BROTHERS  
CONSTRUCTION CO

By /s/ G. W. KOVICK,  
Supt.

GWK/ht

Plaintiff's Exhibit No. 22—(Continued)

DEFENDANTS' EXHIBIT B

to Deposition of George W. Kovick

[Letterhead Basich Brothers Construction Co.]

P. O. Box 5416  
Tucson, Arizona  
May 12, 1945

Duque & Frazzini  
P. O. Box 5416  
Tucson, Arizona

Gentlemen,

In spite of our verbal requests, letters and further requesting your Bonding Company representative to investigate conditions relating to your production of materials, we have received no improvement whatever on your material deliveries.

We have shut down our Concrete Paving operations due to lack of rock base subgrade. All standby charges resulting from this lay off will be charged to your account.

BASICH BROTHERS  
CONSTRUCTION CO

By /s/ G. W. KOVICK,  
Supt.

GWK/ht

[Endorsed]: Filed U.S.C.C.A. July 18, 1947.

## PLAINTIFF'S EXHIBIT No. 23

In the District Court of the United States for the  
Southern District of California, Central Division

No. 5021-P.H.

BASICH BROTHERS CONSTRUCTION COM-  
PANY, a corporation,

Plaintiff,

vs.

GLENS FALLS INDEMNITY COMPANY, a  
corporation, et al.,

Defendants.

## DEPOSITION OF JOHN H. BRAY

The deposition of John H. Bray, a witness produced on behalf of the plaintiff was taken before Charles G. Murray, a Notary Public in and for the County of Los Angeles, State of California on Wednesday, the 4th day of September, 1946, commencing at the hour of 2:00 o'clock P. M. at Room 926 Rowan Building, Los Angeles, California, pursuant to oral stipulation of counsel as hereinafter set forth.

## Appearances:

For the plaintiff, Stephen Monteleone, Esq., 1050 Petroleum Bldg., Los Angeles, California.

For the defendant, John E. McCall, Esq., 926 Rowan Building, Los Angeles, California.



Plaintiff's Exhibit No. 23—(Continued)

Mr. Monteleone: It is orally stipulated, by and between the plaintiff, through its attorney, Stephen Monteleone and the defendants Glens Falls Indemnity Company, et al, through their attorney, John E. McCall, that the deposition of the witness John H. Bray may be taken before Charles G. Murray, a Notary Public in and for the County of Los Angeles, State of California, on the 4th day of September, 1946, at the hour of 2:00 o'clock P. M., at Room 926 Rowan Building, Los Angeles, California, pursuant to the terms and provisions of rules 26 and 32 of this court.

Mr. McCall: It is so stipulated.

JOHN H. BRAY,

a witness produced on behalf of the plaintiff, having been by the Notary Public first duly sworn to testify the truth, the whole truth and nothing but the truth, on oath testified as follows:

Cross Examination

By Mr. Monteleone:

Q. Your full name is what?

A. John H. Bray.

Q. What is your residence address, Mr. Bray?

A. 2052 Midlothian Drive, Altadena.

Q. What is your telephone number there?

A. Sycamore 45758.

Q. What is your business address, Mr. Bray?

A. 548 South Spring Street.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. Do you have a telephone number there?

A. Yes, sir.

Q. What is that telephone number?

A. Michigan 1171.

Q. What is your business or occupation?

A. Claims Manager of the Los Angeles office of the Glens Falls Indemnity Company.

Q. What is your duty or what are your duties in connection with that office?

A. To examine and adjust the claims arising out of bonds or policies against the Glens Falls Indemnity Company.

Q. Is there any other officer in the office?

A. Yes.

Q. Who is that other officer?

A. James S. Henry.

Q. Who is Marvin S. Jonas?

A. He is a Surety Underwriter—a special agent.

Q. Were you occupying this same position in 1945 with the Glens Falls Indemnity Company—the same position as you are today? A. Yes.

Q. What, if any additional hours or duties did you have then that you do not have today?

A. None.

Q. Are you familiar with the bond that was executed by the Glens Falls Indemnity Company as surety for Duque and Frazzini, as principals, in favor of Basich Brothers Construction Company?

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Mr. McCall: I object to that as calling for a conclusion of the witness and as being too broad in its scope.

Mr. Monteleone: He says that he is familiar with it.      A. I did not say that.

Q. (By Mr. Monteleone): Well you know that such a bond existed, do you not?

A. I reviewed what purported to be a copy of such bond.

Q. Did the copy of the bond which you reviewed in any way correspond with the bond which I now exhibit to you on the stationery of the Glens Falls Indemnity Company, bearing date—entitled "Sub-contract Bond", bearing date the 20th day of February, 1945?

A. Well, I haven't time to read all of it but it looks like the same bond.

Q. When did you first see the copy of this bond?

A. Well, that would be hard to say but it was probably three or four weeks after I made my first trip to Tucson, which was in the latter part of April, 1945.

Q. In other words, you had not seen the bond previous to that time?      A. That is correct.

Q. Now, did you have any information given to you prior to that time that such bond had been executed by the Glens Falls Indemnity Company?

A. I saw the report of the execution which was just a skeleton form—what we call a Daily Report.

## Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. Where did you see that?           A. Where?

Q. Well, when did you see it?

A. I saw it some time previous to April 21, 1945.

Q. Can you fix approximately when it was?

A. Well, I imagine around about the middle of April.

Q. Of April, 1945?           A. That is right.

Q. Can you tell me whether or not this bond was executed by the Los Angeles local office of the Glens Falls Indemnity Company?

A. Well, I imagine that the Notary Public's seal will determine that.

Q. Well, we will look at the Notary's seal which shows that the bond was notarized in the County of Los Angeles.

A. Well, if it was signed by Mr. Jonas and was notarized here, it was undoubtedly signed in Los Angeles.

Q. Did you know Duque and Frazzini prior to the 20th day of February, 1945?           A. I did not.

Q. Do you know whether or not any investigation or examination had been made by the Glens Falls Indemnity Company as to the financial responsibility or efficiency of Duque and Frazzini, so far as equipment was concerned, to carry on any contract such as that involved in the contract involved here?           A. I do not.

Q. Have you seen any report of the Glens Falls Indemnity Company which would indicate whether or not an investigation had been made as to the

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

financial responsibility of Duque and Frazzini or the ability of Duque and Frazzini to perform the contract that existed between Basich Brothers and Duque and Frazzini?      A. I have not.

Q. Have you ever made any inquiry to ascertain whether or not there was such an investigation made as to the ability or as to the bond itself?

A. I have not.

Q. Can you state whether or not, from your knowledge of the records and the investigation and reports, the Glens Falls Indemnity Company had acquired any security from Duque and Frazzini, or anyone else, for Duque and Frazzini to secure the Glens Falls Indemnity Company in the event of loss under this bond?

A. I have seen no such report.

Q. What was that answer?

A. I have seen no such report.

Q. Do you know whether or not such is the fact: That the Glens Falls Indemnity Company does hold securities belonging to Duque and Frazzini to insure the Glens Falls Indemnity Company against any loss under this bond?      A. I do not.

Q. Can you state whether or not such a collateral does exist?      A. I don't know.

Mr. McCall: I can get that information for you and give it to you. I would be glad to do so.

Mr. Monteleone: Thank you. I will appreciate that.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. (By Mr. Monteleone): When did you first learn of the contents of the contract bearing date February 7, 1945 that was executed by Basich Brothers Construction Company as one party and Duque and Frazzini as the other party?

A. About the second or third day after I arrived in Tucson, in April of 1945.

Q. Where was that copy at that time?

A. I saw the copy that Duque and Frazzini had in their possession.

Q. Was that the first time that you learned of the contents of that contract?

A. That is right.

Q. Do you know whether or not there was a copy of that contract in the office of the Glens Falls Indemnity Company?      A. In Los Angeles?

Q. In Los Angeles or at any other place.

A. I rather suspect that there was one in the San Francisco office. I have no definite knowledge of it, but I rather think it was because I was sent a copy of it later.

Q. What was the reason it was in the San Francisco office rather than the Los Angeles office?

A. That is just a procedure. We keep only skeleton copies in this office.

Q. Do you know whether or not the bond was made by Duque and Frazzini in the Los Angeles office or in the San Francisco office?

A. I don't know.

Q. Do you know when Duque and Frazzini made

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

application for this bond?      A. I don't know.

Q. Who would have that information?

A. That I couldn't tell you for sure but I rather suspect that would be in San Francisco. It would probably be in the possession of the Bond Department there.

Q. Are you familiar with, or have you ever examined the contents of the contract between Basich Brothers Construction Company on the one hand and the United States of America, through the War Department, dated January 25, 1945, with reference to the construction of the Davis-Monthan Air Field?      A. I have never seen that.

Q. Have you ever sought to acquire information as to the contents of this contract?

A. No, I have not. The only thing I have learned is that there was such a contract and as to the portions of it contained in the contract bond between Basich Brothers Construction Company and Duque and Frazzini.

Q. When you first began making an investigation of this matter, was it under some one's direction?      A. I believe so.

Q. Under whose instruction or direction was it that you began making such investigation?

A. Well, as I recall it, Mr. Basich addressed a letter to Duque and Frazzini and sent a copy to us, and on receipt of the letter to Los Angeles, we immediately sent it to San Francisco and, along about the 15th or 16th of April, they wrote to me

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

and told me they would like to have me conduct—that they would like to have me contact Mr. Basich.

Q. That letter was addressed to the Los Angeles office, is that right?      A. Yes.

Q. That letter bore the date of April 5, 1945, is that correct?      A. I think so.

Q. Would you like to see a copy of it, or are you familiar with that letter?

A. I have seen it.

Q. That was sent to your office by registered mail, wasn't it?

A. I am not certain of that. It was received in the office by mail. I don't remember whether it was sent by registered mail, but it was received and sent on.

Q. Before it was sent to you, did you make an effort to contact Basich Brothers Construction Company or any one connected with Basich Brothers Construction Company?

A. I don't know. I don't think so.

Q. Did you, or any one, ever receive a copy of that letter dated April 5, 1945?

A. I don't know whether it was addressed to us, or not. I did not receive it, myself.

Q. From all of the records of the company and all of the investigations that you have made on the part of the company, up to this time, have you seen any copy of acknowledgement of that letter received from Basich Construction Company?

A. I don't recall that I have.



Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. How long was that letter retained in your local office, here, before it was forwarded to your San Francisco office?

A. I don't know but I rather suspect it went up—

Mr. McCall (interrupting): Not what you suspect—just what you know. A. I don't know.

Q. (By Mr. Monteleone): Well, what would be your estimate as to the approximate time?

A. I would have to guess at that.

Q. No, just what you know.

A. I would say within two or three days.

Q. In other words, you retained it in your office for two or three days?

A. I have no independent recollection of it but it may have been forwarded on the same day.

Q. Do you know whether or not any effort was made or anything was done by any one on the part of the Glens Falls Indemnity Company to investigate the contents of that letter of April 5, 1945?

A. I have no knowledge as to that, no. Nothing was done through our office.

Q. Do you recall approximately how long it was after the letter had been sent to San Francisco office before it was sent back to the Los Angeles office?

A. The letter was not returned. I got another letter from San Francisco.

Q. Was that a letter of instruction?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. It was a letter instructing me to contact Mr. Basich.

Q. Was a copy of the letter of April 5, 1945, retained in your office?

A. I don't think it was. I think I wrote for a copy of the letter later. That is something I have no recollection of now.

Q. You think you had written a letter for a copy. Have you any recollection as to how long it was after that that you wrote for a copy of the letter?

A. I would estimate that it was around the latter part of April or the first part of May.

Q. Can you state about when it was that you received this reply from the San Francisco office?

A. The first reply?

Q. Yes, the first reply after they had received that letter.

A. I think that letter arrived—May I refer to a calendar?

Q. Yes.

A. I think I can tell you within a day or so—Well, I would estimate probably the 17th or 18th of April it was that I received this letter.

Q. Do you have any record or diary in your possession which would show as to when the letter was forwarded to the San Francisco office?

A. I doubt that because, ordinarily, we do not write letters of transmittal of these matters.

Q. When that letter was sent to the San Fran-

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

cisco office, was it sent with any notation from any one in your office as to what should be done?

A. No.

Q. Did you ascertain as to any contents of the letter sent to the San Francisco office—the letter bearing date April 5, 1945?      A. No.

Q. Now, from the time you sent that letter to San Francisco, until the time you got this reply from San Francisco, some time later on, did you make any contact with Basich Brothers Construction Company?      A. No.

Q. Did you, during that period of time, make any contact with Duque and Frazzini?

A. No.

Q. Did you know that Duque and Frazzini were working in Tucson, Arizona at this time, on that job?

A. I think I knew something about it. I think I knew that there was such a job and I think I probably checked it at the time the letter came in.

Q. You knew the address of Duque and Frazzini, then?

A. I did not know their address.

Q. You knew that they were working at Tucson?

A. I understood they were, yes.

Q. Did you make any effort to ascertain the address of Duque and Frazzini from the time you forwarded the letter to San Francisco until you got your instructions from San Francisco, later on?

A. No.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. Can you state what, if any instructions were given to you by San Francisco?

Mr. McCall: I object to that on the grounds that it is incompetent, irrelevant and immaterial as to what instructions may or may not have been given to him by his San Francisco office.

Mr. Monteleone: Do you instruct the witness not to answer or do you merely make your objection?

Mr. McCall: Well, if he has any answer, he can make it.

A. We got a letter from San Francisco instructing me to contact Basich Bros. Construction Co. and investigate and find out what the trouble was.

Q. (By Mr. Monteleone): At the time you received the copy of this letter of April 5, 1945, you knew, did you not, that under the contract, Duque and Frazzini had—that pursuant to the contract of February, 1945, Duque and Frazzini were to install two plants, each with the capacity of producing 800 cubic yards of material per day?

A. I had no such knowledge.

Q. Well, the letter, itself, conveyed that information didn't it?

A. I have no recollection of the letter.

Q. Look at that letter.

A. This letter speaks for itself. It says that it is agreed that you are to get two plants, each capable of producing 800 cubic yards per day. There is no question about that.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. When you first acquired knowledge that Duque and Frazzini had not established two plants capable of producing 800 cubic yards of material a day, what was your action in regard to contacting Duque and Frazzini on that knowledge?

Mr. McCall: That is objected to on the grounds that it is incompetent, irrelevant and immaterial as he has not stated that he had any connection or made any action in that regard. Your question presumes that he got facts that he could rely upon.

A. I do not recall as to that. I had not seen that letter, naturally.

Q. (By Mr. Monteleone): You had seen it while in your possession?

A. Yes, but I had not read it carefully.

Q. Did you know that under the contract that Duque and Frazzini had with Basich Brothers Construction Company they were to establish two plants capable of producing 800 cubic yards of material per day?

A. I do not recall anything about such a statement in the letter. I do not recall that.

Q. Did you in any way contact the Basich Brothers Construction Company before you got that letter from San Francisco?      A. No.

Q. When you ascertained the contents of the letter dated April 5, 1945, that Duque and Frazzini did not commence to operate the plant on February 19, 1945, did you in any way contact Basich Broth-

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

ers Construction Company to ascertain what the situation was before you received instructions from San Francisco?

Mr. McCall: Just a minute. Will you please read that question?

(The question is repeated by the Notary Public.)

A. No.

Q. (By Mr. Monteleone): Now, what was the first thing you did after receiving instructions from your San Francisco office?

A. I contacted Mr. Basich. I believe I telephoned and made an appointment to see him.

Q. Which Mr. Basich was that?

A. Nick Basich.

Q. Did you see him after that?

A. I did.

Q. Where did you see him?

A. At his office.

Q. Who was present at that time?

A. Just Mr. Basich and myself.

Q. Can you fix the time you saw him on that occasion?

A. Do you mean the time of the day or the date?

Q. The day.

A. I would say it was probably April 18th or 19th.

Q. Of what month?           A. Of April.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. What, if anything was said by you and Mr. Basich on that occasion?

A. Well, I asked Mr. Basich and told him that I had been requested to make an investigation by my San Francisco office and asked him what the situation was over there. He told me that Duque and Frazzini had encountered a lot of technical difficulties and that the engineering set-up in some respects was not correct. I asked Mr. Basich about the prices on the job and he told me that he thought the price was adequate. I asked him—This was a long time ago and it is hard to remember exactly—Mr. Basich told me that he thought they should—that he thought, though, that if Duque and Frazzini would get a proper engineering set-up and proper organization, that any money they had lost up to that time on the job would be the entire loss they would have and that they possibly had a chance of working out without any loss, or at least without any loss from then on, out. But he did not know what loss they had sustained as he did not know what outstanding bills there were, but he assumed that they had lost some money up until that time. He requested that we have some one look into the situation at Tucson or that he thought that would be a good idea; and I later on contacted my San Francisco office, as I recall.

Q. Before we get to that, let us finish the conversation.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. That was about the extent of the conversation.

Q. Before you went to see Mr. Basich, did you have in your possession a copy of the Basich and Duque and Frazzini contract?      A. No.

Q. Had you seen a copy of that contract before going to see Mr. Basich?      A. No.

Q. Did you know what the contents of that contract were?      A. No.

Q. Had your San Francisco office, up to that time, told you what the contents of the contract were?

A. At the most, just what the amount was, nothing special.

Q. Had your San Francisco office, up to that time, furnished you with the information that the contract was to be commenced on or about February 19, 1945, and was to be completed on or before June 3, 1945?

A. I don't recall such information.

Q. Did you receive any information at that time?      A. No.

Q. Did you receive any other information up until you called on Mr. Basich to the effect that Duque and Frazzini were to construct two plants, each to be capable of producing 800 cubic feet of material under the contract?

A. No. I may have known that at some time, but I do not recall.



Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. When you contacted Mr. Basich on this occasion, after you had read the letter of April 5, 1945, did you discuss with Mr. Basich the matter as to when Duque and Frazzini actually commenced operation under this contract?

A. No, I don't believe I ever did.

Q. Did you discuss with Mr. Basich anything about the fact that Duque and Frazzini were not averaging 800 cubic yards of material per day per plant?

A. I don't recall as to the details but he stated they were not keeping up with the production necessary to keep him going.

Q. I did not ask you that, but did you after receiving information as to the contents of the letter of April 5, 1945, discuss with Mr. Basich the fact that Duque and Frazzini were not averaging 800 cubic yards per day on each plant?

A. I don't recall that now.

Q. Did you get information from Mr. Basich to the effect that their plants were not capable of producing that amount of material?

A. I don't think he said that. I think he said that the engineering set-up was not capable of producing that material but I don't recall his words.

Q. After you had this conversation did you contact your assured, Duque and Frazzini?

A. Yes, I went over to Tucson. I went that week—on Saturday night.

Q. Could you fix the time you went to Tucson?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. I think I left here on the night of the 21st of April.

Q. Did you see Mr. Duque and Mr. Frazzini on that particular trip? A. Yes, I did.

Q. When you saw Mr. Basich at his office, isn't it true that an arrangement was made to meet Mr. Basich on the particular day when you got to Tucson?

A. Well, I told him I would contact him there when I got there. I did not do that in the conversation but on the phone—by a phone call, I think, that same day or the following day.

Q. You telephoned him at that time that you would meet him, after you decided to go to Tucson?

A. I didn't know at the time I was in his office if I would go to Tucson, but I telephoned him later and told him that I would.

Q. At the time you called on Mr. Basich, did you ascertain the contents of the bond executed by the Glens Falls Indemnity Company for Duque and Frazzini?

A. I had not seen a copy of the bond.

Q. Did the San Francisco office furnish you a copy of the bond at that time? A. No.

Q. Did the San Francisco office furnish you with information as to the contents of the bond at that time?

A. Only to the effect that it was a contract bond.

Q. Did you have, or do you have any records in your Los Angeles office which would give you

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

any particulars as to the terms of the bond at the time you went to see Mr. Basich on this occasion?

A. No.

Q. Now, as I understand it, the purpose of—if I am wrong you may so state—that the purpose in making this trip to Tucson was to investigate the complaint made by the Basich Brothers Construction Company as set forth in their letter of April 5, 1945, and what transpired between you and Mr. Basich at the office, is that right?

A. It was just to investigate the situation.

Q. At the time you got to Tucson, how long did you remain there?

A. About three or four days.

Q. Did you telephone to Duque and Frazzini prior to the time of going to Tucson?

A. No.

Q. Now, when you got to Tucson whom did you see there?

A. Well, when I got there it was Sunday and I tried to call Mr. Basich and could not reach him. Then I tried to call Duque and Frazzini and could not reach them. I think I finally reached Mr. Basich at his hotel on Sunday evening.

Q. You did see Mr. Basich, did you?

A. Yes.

Q. And you and he took a trip down to the pit?

A. Well, Mr. Basich, as I recall, told me to come

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

by the hotel and he would drive me to the job; and we had breakfast there and he let me off at the pit where they were operating.

Q. Were you given full authority by your San Francisco office or by the Company to carry on this investigation.

A. I was requested to investigate the situation.

Q. And were you required to make a report as to the result of your investigation?

A. I did, later. That was assumed.

Q. Well, you were in Tucson on Sunday and Monday—you say three or four days?

A. Yes.

Q. And while you were in Tucson did you and Mr. Basich make a trip to the pit where Duque and Frazzini were operating?

A. I don't recall that. I was there one time but, as I recall it, that was the time you were there with us.

Q. In other words, you would not state whether you did or did not?

A. No, my statement that I went to the pit with him was indefinite. I don't remember.

Q. While you were in Tucson, did you have occasion to meet either Mr. Duque or Mr. Frazzini?

A. Oh, yes.

Q. Did you have any conversation with them at that time?      A. Oh, yes.

Q. Did you at any time, while there, see the contract they had—the contract between Basich

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Brothers Construction Company and Duque and Frazzini?      A. Oh, yes.

Q. Did you at that time see a copy of the bond which was issued by the Glens Falls Indemnity Company?      A. I don't believe that I did.

Q. At the time you were in Tucson, had you acquired information, or been furnished with information as to the terms of the bond?

A. Nothing definite. I have a general knowledge of what is in most of such contract bonds.

Q. Now, while you were in Tucson did you ask Duque and Frazzini as to when they commenced operation on this job?

A. I believe I asked but they could not tell me.

Q. Did you ask to examine their records to determine that?

A. I asked to examine their records, but I don't believe they had any records.

Q. Did you go to their office to ascertain that?

A. Oh, yes.

Q. Their office was at the pit, wasn't it?

A. Oh, yes.

Q. Then you did go there?

A. Yes, but I thought you asked me if I went there with Mr. Basich.

Q. How many times did you go to the operation?

A. Two or three times.

Q. How long did you stay on each occasion?

A. I was there on Monday, Tuesday and Wednesday, as I recall. I went with Mr. Basich

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

rather early in the morning—I think about seven or seven thirty.

Q. You went with Mr. Basich to the work?

A. To the job. He let me off at Duque and Frazzini's office.

Q. Then you did go to Duque and Frazzini's office with Mr. Basich?

A. Yes, he was my chauffer.

Q. How long did you stay at the pit on that occasion?

A. Mr. Basich said that he would come and pick me up around noon, or have some one come and pick me up and wanted me to go and have lunch with him.

Q. Did he come and pick you up?

A. Mr. Kovick came over and picked me up later.

Q. How long did you stay there?

A. Two or three hours.

Q. While you were there did you examine the records of Duque and Frazzini?

A. Yes, such as they had.

Q. Did those records show the amount of material they had handled while in operation?

A. No.

Q. Did they have any records of that?

A. No.

Q. Did they have any records of what their labor bills were?

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

A. I think they had a copy of some of the pay-rolls but they were not full and complete.

Q. Was there any record of rental they had paid on any equipment?

Mr. McCall: You mean, did they show him any record?

Mr. Monteleone: That is right.

A. They showed me a record of the bills they owed to supply houses.

Q. Did they show you all of the records they had? A. They showed me what they had.

Q. They did not refuse to show you any records that they had, did they? A. No.

Q. What records did they show you?

A. I was interested in finding out what bills they had outstanding and Mr. Duque took me around and showed me the operations.

Q. While you were there, did you find out what bills they had outstanding? A. Yes.

Q. Did you discuss with them the efficiency of the equipment?

Mr. McCall: That is objected to on the grounds that it is incompetent, irrelevant and immaterial as he is not an expert.

Mr. Monteleone: Well, I asked him if he discussed it with him.

A. I discussed with them about what they thought had been produced, or what they thought they had been producing and we went over the various operations.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. Did you discuss with them, there, as to what was contained in this letter of April 5, 1945?

A. Well, I told them that I had received a copy of the letter.

Q. Did you discuss with them the complaints contained in that letter?

A. Well, I tried to ascertain from them as much as I could, all information as to what their production had been amounting to and what their costs were.

Q. Did you ascertain that they were not averaging 800 cubic yards of material per day at each plant?

A. I don't think I asked them about "800 cubic yards" per day, as I had not seen the contract, as yet.

Q. But you had seen the letter of April 5, 1945?

A. Yes.

Q. Then, I am not asking about the contents, but did you discuss with them about not producing 800 cubic yards of material per plant per day?

A. I don't recall that I asked that particular question.

Q. What was the amount that they said they were producing at the time you discussed this situation?

A. At the time I discussed it, I think neither one of them could agree on the amount of material they had been producing, and neither one had the records to show. They said they had had break-



Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

downs from time to time and had had trouble in getting their plant going and they said they had had to rent a plant from Basich—and Mr. Basich had told me that.

Q. Did you discuss with them and ask whether or not they had been averaging 800 cubic yards per day?      A. I don't recall that I did.

Q. After you left there, did you go to the Duque and Frazzini plant?

A. Mr. Duque took me around in his car and showed me the various operations.

Q. What was the result of your investigation?

Mr. McCall: I object to that on the ground that there has been no showing made that this man knows anything about the operation of machinery.

A. I recall that there was a lot of dust blowing around there.

Q. (By Mr. Monteleone): You remember that you referred to this rock crusher as "nothing but a small coffee grinder," isn't that true?

A. I don't recall that, no. I probably referred to it as "the squirrel cage." I think Mr. Basich was the originator of the term "coffee grinder."

Q. In other words, that crusher did not impress you very much, did it?

A. Actually I did not know much about crushers. I had never seen one before.

Q. Well, while you were there, did you ask Mr. Basich as to his opinion about making the plant more efficient?

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

A. I did not ask it. I think he volunteered it.

Q. What did he say in that respect?

A. I think he told me that the method of feeding the A, B, C, plant was not efficient; that they were using a carry-all and a bulldozer to shove the material down into the grizzly.

Q. While you were there didn't he suggest it would be better to acquire a plant from P.D.O.C., which would do the work more efficiently?

A. I don't think Mr. Basich took it up with me.

Q. Did Mr. Duque or Mr. Frazzini?

A. Yes, I think they said that Basich said such a plant was available and that they should get it.

Q. Did you make a trip with Mr. Kovick of the Basich Brothers Construction Company to view this plant?      A. No.

Q. Did you see this plant while you were in Tucson?      A. No.

Q. Did you inquire as to the terms under which this plant could be acquired from P.D.O.C.?

A. No, sir, I didn't but Duque and Frazzini told me.

Q. What was said by them about that?

A. I don't recall—twelve cents per yard, I think, truck measure, or ten cents per yard was mentioned—I don't exactly remember.

Q. While you were there, did you get any information from P.D.O.C.; or any inquiry from P.D.O.C. that arrangements were being made for Duque and Frazzini to rent this equipment?

A. No.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. While you were there, didn't you tell Mr. Basich that Duque and Frazzini had arrangements with P.D.O.C. to obtain this plant? A. No.

Q. Did you have any conversation with Basich about Duque and Frazzini having acquired the plant?

A. No. I attended a conference with Mr. Basich and Mr. Kovick and Mr. Duque and Mr. Frazzini were there. I think it was on April 25th.

Q. What transpired at that conference?

A. Well, as I recall, on the evening before the conversation, Mr. Frazzini told me that Mr. Basich had been talking with Mr. Earl, I believe his name is—of P.D.O.C. and they told me that the plant was available and the terms; that they had an appointment with Mr. Basich the next morning and I went along with them to Mr. Basich's office.

Q. You told me that you made two or three more visits to the pit after the first visit, with Mr. Basich?

A. I went there two days.

Q. What was your purpose in going there?

A. I had no transportation there and I was waiting for some good Samaritan to give me a ride.

Q. What was the occasion of your going there—what was the purpose?

A. Well, I went there with Mr. Basich?

Q. I understand that you went there on the first day with Mr. Basich? A. Yes.

Q. What was your purpose in going to Duque and Frazzini's office after the first occasion?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. I was trying to get information to make a report as to the situation.

Q. What other information did you get on these later occasions that you had not received on the first occasion?

A. I think I went into the equipment they had and how much rent they were paying and from whom they were renting it.

Q. Was that all—on the second occasion?

A. Well, I don't recall as to—

Mr. McCall: (Interrupting) If you do not remember, just say so.

Mr. Monteleone: You are doing all right.

A. That was the information I was trying to obtain—their ideas as to how much production they had and what they were capable of producing.

Q. Did they give you any details as to what production they had?      A. No, I don't think so.

Q. Did they give you any information as to what production they expected to have in the future?      A. I don't remember that.

Q. Did they refuse to give you any information which they had available, which you requested of them, while you were there?

A. I don't know that they actually refused. There was certain information they said they could not give me.

Q. What information did they say they could not give you?

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

A. Well, with respect to the equipment they owned and the price, and what-not, for one thing.

Q. You mean the equipment which they owned at the pit?

A. At the pit and altogether—at the pit and otherwise.

Q. You mean, operated in connection with other than this job?      A. Yes.

Q. What was the purpose of that?

A. I wanted to furnish that information to my office in San Francisco. That was part of my investigation duty.

Q. In other words, your office in San Francisco wanted you to inquire as to the financial responsibility of Duque and Frazzini?

A. I don't think they did.

Q. Isn't that information usually obtained before a bond is written?

A. Oh, yes. Usually there is some investigation.

Q. Do you know whether or not it was made in this case?      A. I do not know.

Q. Then, before you left, you went over to Basich Brothers Construction Company's operations, did you not?      A. Yes.

Q. That was near the project of the Government contract?      A. Yes.

Q. There were one or two bookkeepers in the office were there not?

A. I believe a bookkeeper and one or two girls—stenographers.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. They had a bookkeeper there, did they not?

A. Yes, I believe there was one bookkeeper.

Q. Do you remember his name?

A. Homer Thompson, I believe.

Q. They had books of record there?

A. Yes.

Q. Did you not at that time make a record of the production of Duque and Frazzini of this material.

A. I was given the information taken from their records. I don't think I made an examination of the records, myself.

Q. How long a time did you spend at the Basich Brothers Construction office?

A. I don't know. I went there soon after lunch and I was probably there for an hour or two hours. I don't remember.

Q. At that time did you make memorandum of the records kept by Basich Brothers Construction Company?

A. I believe I took down some records.

Q. That included the payrolls?

A. I believe they gave me that.

Q. And the record of the yardage?

A. I believe they gave me some figures on truck measurement.

Q. Did they include the payroll in that figure?

A. No, I believe that the figures were made by deliveries made by the truck load.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. Did they tell you what they were to pay Duque and Frazzini? A. I don't think so.

Q. Did you inquire of Duque and Frazzini as to what they were to be paid?

A. I believe I did later.

Q. You saw the Duque and Frazzini contract before you went to the office of Basich Brothers Construction Company, didn't you?

A. No, I don't think they had it available then.

Q. Did you check at the Basich Brothers Construction Company offices as to the amount of equipment rentals?

A. They did not have the amount up to date and could not give it to me.

Q. They gave you what they had, didn't they?

A. They gave me a payroll and some equipment rentals and some rental on trucks up to the first of April.

Q. They offered to furnish you with what information you wanted from time to time, didn't they?

A. Yes, they were very cooperative.

Q. Did you, later on, make any request of Basich Brothers Construction Company for information in connection with the labor, expense or equipment expense, or outstanding bills, or the amount of money they were earning under their contract?

A. Well, I believe I did. I was over there at the middle of May and I met Mr. Kovick and Mrs. Thompson. I don't believe Mr. Basich was there then.

any  
Q  
A

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. You made another visit there in about the middle of May?      A. Yes, sir.

Q. Did you—meaning the Glens Falls Indemnity Company, make a written request of Basich Brothers Construction Company for any written statements of the amount of money earned by Duque and Frazzini under the contract, or for any labor or equipment expenses up to the present time—

Mr. McCall: (Interrupting) Just a minute.

Mr. Monteleone: Well, we will cut out "up to the present time" and make it read up to the time you made the second trip to Tucson.

Mr. McCall: I object to any other inquiry as the question is not framed. I object to the entire question on the grounds that it calls for a conclusion of the witness and presumes that he knows everything that everyone in connection with this Glens Falls Indemnity Company has done.

Mr. Monteleone: I mean to your personal knowledge.

A. No, not to my personal knowledge.

Q. Upon until the time you had full investigation authority in this matter, didn't you?

A. I would not say that.

Q. Well, you made a full investigation?

A. I made that investigation.

A. You know that you did not make any request  
delivered and that, so far as you know, no one else made such  
request—is that right?      A. Yes.



Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. When was it, with reference to the first visit that you made, that you went to Tucson again?

A. I think it was some time just prior to the middle of May.

Q. Prior to going to Tucson on the second occasion, about the middle of May, you received a letter from the Basich Brothers Construction Company, dated April 27, 1945, isn't that true?

A. Well, I don't know.

Q. I show you a copy of it and ask you to look at it.

A. I have received so many letters that I don't know all of them.

Q. Now, Mr. Bray, I have shown you a copy of what purports to be a letter addressed "To Duque & Frazzini, Post Office Box 73, Tonopah, Nevada, and Glens Falls Indemnity Company of Glens Falls New York, dated April 27, 1945, and signed "Basich Brothers Construction Company" and ask whether or not you have any recollection of receiving that letter?

A. I am quite certain that I received that.

Q. You are quite certain you received it soon after the date it bears, April 27, 1945?

A. I am not certain of that but I presume I did.

Q. You read it over after receiving it?

A. Yes.

Q. At the time you read it, had you learned what the contents of the contract between Basich Brothers

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Construction Company and Duque and Frazzini were? A. Yes, I am sure that I had.

Q. Did you have a copy of it in your office?

A. Yes, I think so.

Q. At that time did you learn what the terms of the contract and bond were?

A. I am not sure of that. I don't think I have had a copy of the bond.

Q. Well, not having a copy, did you have knowledge as to the substance of it?

A. Well, I don't think so, no sir.

Q. Had you made an effort to get it?

A. I had written to San Francisco.

Q. When with regard to April 27, 1945?

A. I think it was after I got back from Tucson.

Q. When did you go to Tucson?

A. Oh, I left here on the night of April 21.

Q. When you received this letter, did you or your company acknowledge receipt of it?

A. I think Mr. McCall officially acknowledged the receipt of it. I think I discussed it with him.

Q. In other words, after the receipt of that letter, you discussed it with Mr. McCall, the attorney for the company? A. Yes.

Q. And you told him the situation, did you?

A. Yes.

Q. Did you ask him to answer the letter for the company?

A. I am not sure what I said, but he answered it, I believe.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. In other words, Mr. McCall had the authority to answer that letter dated April 27, 1945?

A. Yes.

Q. In that letter it called attention to the fact that the Duque and Frazzini contract required Duque and Frazzini to erect two plants, each to produce 800 cubic yards of material per day, to be used on a Government contract that they had; that they had at that time failed to comply with that requirement. Did you follow up and make an examination or investigation to verify the truth of this statement made in the letter of April 27, 1945?

A. I don't remember what I did in that regard, now.

Q. Did you contact Basich Brothers Construction Company shortly after—say within three or four or five days after you received this complaint, to check on this complaint they made on failure to erect two plants each capable of producing 800 cubic yards per day?

A. I don't think it required 800 cubic yards per day, or what it said.

Q. What did you understand it to say?

A. 800 cubic yards, I think it said.

Q. Now, in the letter that Mr. McCall wrote in response to that letter, you referred to the fact that it required the erection of two plants of 800 cubic yards capacity per day?

A. I don't know what that was—I don't know as I discussed it with him.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. But you understood that it required the erection of two plants of 800 cubic yards per day?

A. I don't know as I did.

Q. Did you discuss it with Mr. Basich?

A. I believe that Mr. Basich in his letter said that that was his agreement.

Q. Now, when Mr. Basich, in his letter of April 27, 1945, stated that this was the agreement, at which time you had already seen the contract, itself, did you call Basich Brothers Construction Company's attention to the fact that the contract did not state that the plant was to be for each plant 800 cubic yards per day, or an output of 800 cubic yards per day?      A. When was that?

Q. April 27, 1945.

A. I don't think I talked with him after April 27th.

Q. Did you in this letter state that his letter referred to 800 cubic yards per day, per plant? While the contract only specified 800 cubic yards, without stating "per day"?

A. I don't recall that.

Q. You just assumed that it was 800 cubic yards per day without reading it out?

A. I don't know as I had any understanding as to that but it was what the contract stated.

Q. Now, did you contact Duque and Frazzini after you received this letter of April 27, 1945, to find out whether or not they were producing the

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

amount of material which Basich Brothers Construction Company, in this letter of April 27, 1945, stated they had not been producing?

A. I think I talked with either Mr. Duque or Mr. Frazzini at Tucson, on the telephone.

Q. I don't want what you think, but do you remember what you did?

A. I don't remember whether I did, or not.

Q. Did you write to them inquiring about it?

A. I don't think so.

Q. What, if anything, did you do to investigate the complaint made by Basich Brothers Construction Company as contained in the said letter of April 27, 1945?

A. Well, I don't think that I did anything other than I believe we had a conference here in Mr. McCall's office at which I believe you and Mr. Basich were present, sometime in the early part of May.

Q. Did you send a copy of this letter of Basich Brothers Construction Company, dated April 27, 1945, to your San Francisco office?      A. Yes.

Q. You kept your San Francisco office advised, constantly, then, on these matters?

A. Oh, I sent them copies of all letters, yes.

Q. We had a conference in—on May 3rd, 1945, with Mr. McCall, in which Mr. Basich and myself, as attorney for Basich Brothers Construction Company, yourself as representative of the Glens Falls Indemnity Company and Mr. McCall as attorney for Glens Falls Indemnity Company were present. Is that correct?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. Yes, we had a conference.

Q. At that time Mr. Basich advised you, did he not, that the crushing plant of Duque and Frazzini was, as he then referred to it, as I recall, as a "coffee grinder" and you referred to it as what?

A. A "squirrel cage." It had the screen on it and looked like a squirrel cage.

Q. And you agreed that something should be done to correct that situation?

A. Well, Mr. Basich remarked on it and said they had not bothered them yet but he was afraid they would not be able to produce sufficient material.

Q. At that time he said they were not producing 800 cubic yards a day?

A. I think he mentioned it, and you mentioned that, too.

Q. And he said that they were not producing half of that, didn't he?

A. I don't recall.

Q. Well, what was said about that?

A. I don't remember.

Q. You did go to Tucson again, after that, didn't you?

A. Yes.

Q. How long after this conference was that?

A. About a week.

Q. What was your purpose in going to Tucson, then?

A. I went there with the engineer to take a look at the thing. The San Francisco office had made arrangements with him and——

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. Was that a San Francisco office engineer?

A. Yes, he was some engineer that they arranged with.

Q. What was his name?           A. Mr. Bellou.

Q. That date would be what, would you say?

A. Once again I will have to get the calendar out—I think I left here on the night of May 10. That is approximately the date, anyway.

Q. Before you left, did you confer with Duque and Frazzini about the matter?

A. I rather think that I called them.

Q. In the letter that Mr. McCall had written acknowledging receipt of Basich Brothers Construction Company, he says, "I was advised by Mr. Bray this morning that he called Duque and Frazzini and was told that they are now turning out the required quantity of material and, if necessary, they will operate another shift." Is that right?

A. I would say that is correct. I called them on two or three occasions.

Q. You called them and made statements that there were complaints made by Basich Brothers Construction Company that they were not producing a sufficient amount of material, is that right?

A. I am not sure if they called me or I called them. I told them that there was such a complaint.

Q. You told Basich Brothers Construction Company that a copy of that letter was sent to Duque and Frazzini?

A. I assume so.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. That is right. I mean a copy of the letter that Mr. McCall had written, dated May 8, 1945—a copy of that was sent to Duque and Frazzini?

A. That, I am not certain of. I don't know.

Q. Now, did you discuss with Mr. McCall the contents of this letter dated May 8, 1945, addressed to Basich Brothers Construction Company?

A. The letter he drew—I rather think he discussed it with me.

Q. In other words, did you know the contents of it before it was mailed to the addressee?

A. I rather think so.

Q. How long did you stay in Tucson on the 14th day of May—the 10th day of May?

A. I think I arrived at Tucson on the night of May 11 and left there around noon of May 13th, which was Sunday.

Q. Now, whom did you see while you were there?

Mr. McCall: I object to that as being too general.

Mr. Monteleone: I mean in this connection.

Q. (By Mr. Monteleone): Did you see Mr. Duque and Mr. Frazzini? A. Yes.

Q. And did you see any one connected with Basich Brothers Construction Company?

A. I saw Mr. Kovick.

Q. Did you go to Basich Brothers Construction Company's office? A. Yes.

Q. Whom did you see there?

A. I think Mr. Kovick and he drove us over the Basich job.



Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. While you were at the plant of Duque and Frazzini, did Mr. Bellou make any suggestions to any one as to what changes should be made in the plant?

A. I think he discussed with them some changes in their operation.

Q. Can you recall what changes he indicated?

A. No, I don't know. He felt that they had too big a power unit on their "coffee grinder plant" as Mr. Basich called it, and that they had changed over to a truck feeding of the plant which he agreed was a proper procedure. I do not recall any other suggestions that he made to them. I don't think he went there so much for the purpose of making suggestions as he did for the purpose of making a report to the company.

Q. Did he make a report to the company?

A. He made a verbal report to me.

Q. Did you write that report to San Francisco?

A. Yes.

Q. Did you make a copy of that report and send the same to Duque and Frazzini? A. No.

Q. Did you inform them of the contents of that report?

A. I don't think I made any other reports—I don't think I made them any report other than what we talked of while there. I don't think I made any.

Q. Did you discuss with or inform any one connected with Basich Brothers Construction Company

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

as to the recommendations or the report that Mr. Dellou had made?      A. No.

Q. While you were there in Tucson, did you make any inquiries from Duque and Frazzini as to the amount of payroll or the amount of material or the amount for rental of equipment or the amount they had earned?

A. I believe I did. They said they had not received a statement from Basich Brothers Construction Company as to that.

Q. Did you see any records there?

A. Yes.

Q. What was that?

A. They had a statement of the number of men and the hours worked and the rate of pay but they had no extensions and they had some bills.

Q. Did you go to Basich Brothers Construction Company and examine their records?

A. I did not examine their records but I asked for information and they gave it to me.

Q. Did they give you the information you requested?

A. They gave me the information on the payrolls the same as they did before, but they did not have a posting on the rental of equipment and they did not give me any totals on that.

Q. To what date did they give you the postings on, as to the equipment?

A. To the first of April.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. They did not give you information as to the payments made by Basich Brothers Construction Company showing that the rental on equipment far exceeded the amount of material that they had coming from Basich Brothers Construction Company? A. They did not.

Q. You knew that, didn't you? A. No.

Q. When did you first learn that the amount of rental paid out by Basich Brothers Construction Company for labor and rental of equipment far exceeded the earnings of Duque and Frazzini?

A. I didn't find that out until I went over there later.

Q. When was that?

A. The latter part of May.

Q. I call your attention to a letter bearing date May 24, 1945, addressed to Duque and Frazzini and Glens Falls Indemnity Company of Glens Falls, New York, signed by Basich Brothers Construction Company and ask whether or not you recall receiving that letter?

A. I believe I received it, yes.

Q. You received that letter before you went to Tucson with Mr. McCall, where you met myself and Mr. Basich, did you not? A. I think so.

Q. Calling your attention to that letter, it mentions the fact, doesn't it, that the following fact—"You and each of you are hereby notified that said subcontractors are not paying the just labor claims arising under said contract of date February 7,

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

1945, and apparently will encounter difficulty in continuing the payment of said labor claims. You, and each of you are hereby notified that pursuant to said Article XI contained in said contract of February 7, 1945, the prime contractor has made labor payments, material payments and supply payments for said subcontractors in the past for the prosecution of said work but that the amount of moneys due the subcontractors is not sufficient to meet the past advancements made by the contractor Basich Brothers Construction Company; that such deficiency shall be chargeable against the subcontractors and the above surety Glens Falls Indemnity Company. As soon as an account can be prepared on this matter, the same will be submitted to you." Now, then, you did know that there was a deficiency.

A. I did receive that letter—if that is knowledge.

Q. When you received that letter, did you acknowledge receipt of the same?

A. I think that Mr. McCall did. It was referred to him for attention, anyway.

Q. It was referred to Mr. McCall?

A. Yes.

Q. Did the Glens Falls Indemnity Company, through your office, or the San Francisco office, ever acknowledge this letter?

A. Not unless Mr. McCall acknowledged the receipt of it.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. Now, this letter of May 24, 1945, further states, "You are hereby further notified that demand is hereby made upon the said principal and the said surety on said bond to make all present payments due on labor claims arising under said contract and all further and future labor claims as provided in said bond and in said agreement of date February 7, 1945, and, upon failure to do so, the contractor, Basich Brothers Construction Company, will make said payment and charge the same against said surety and said principal." You recall reading those statements, is that true?

A. I undoubtedly read it.

Q. Now, at the time you received this letter dated May 24, 1945, had you read the contents of the sub-contract between Basich Brothers Construction Company and Duque and Frazzini, bearing date of February 7, 1945?

A. Yes.

Q. At the time you received that letter of May 24, 1945, did you know what the contents of the bond was that had been executed by the Glens Falls Indemnity Company?

A. I believe so.

Q. You knew all of the conditions and restrictions contained in that bond at that time, is that right?

Mr. McCall: I object to that on the grounds that it is calling for a conclusion of the witness and the bond speaks for itself.

Q. (By Mr. Monteleone): Now, you state that Mr. McCall acknowledged receipt of this letter—is that right?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. I say that it was referred to him for attention.

Q. Did you see the letter which Mr. McCall sent in acknowledgment of the receipt of the letter dated May 24, 1945?

A. If he dispatched such a letter I undoubtedly saw it or a copy of it.

Q. Now, I will show you a letter signed by Mr. McCall, dated June 7, 1945, and it states: "This will acknowledge receipt of copy of letters which you addressed to Duque and Frazzini at Tonopah, Nevada, May 23rd, 24th and June 1st, 1945, with reference to a subcontract which they have with you." Is this a copy of the letter which Mr. McCall wrote for the Glens Falls Indemnity Company?

A. Yes.

Q. You did see it before it was forwarded?

A. Yes.

Q. You did see the letter of May 24, 1945, before acknowledging receipt—before the sending of this letter of June 7, 1945, is that true?

A. What is that?

Mr. Monteleone: Strike the question and I will reframe it.

Q. (By Mr. Monteleone): Isn't it true that before Mr. McCall acknowledged receipt of the letter of May 24, 1945, by his letter dated June 7, 1945, you received from Basich Brothers Construction Company another letter dated June 1, 1945, a copy of which letter I will now show you.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

A. If you say that this is a copy of it, we undoubtedly received it.

Q. Do you have a recollection of receiving it?

A. I have no recollection of receiving numerous letters. If you say that is one sent to us, I undoubtedly received it.

Q. Now, in that letter dated June 1, 1945, it stated as follows: "Whereas, your attorney, Mr. John McCall, was this date advised via telephone that we have just received information that your insured, Duque and Frazzini, shut down their small crushing plant on May 31, 1945, and contemplate closing the Pioneer Plant June 2nd and June 3rd, 1945," was that letter read by you?

A. Well, undoubtedly it was if that letter was sent to me by you—I evidently saw it.

Q. You were advised by Basich Brothers Construction Company, prior to the time you went to Tucson with Mr. McCall and Mr. Basich and myself, that the Government was insisting on the bomber ground being completed without any delay?

A. I think I knew that, if I got a letter—which I undoubtedly did.

Q. What did you do after receiving the letter dated June 1, 1945, toward investigating what was complained of?

A. I can't remember now just what I did. I may have received a call from Duque and Frazzini or called them. I remember that I did get calls from them from time to time.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Mr. McCall: I suggest that you just answer what you know of your own knowledge and not what you suspect—what you suspect you may have done.

Q. (By Mr. Monteleone): Do you have any records as to whether or not you had contacted Duque and Frazzini during the period from the 24th day of May, 1945, to the first day of June, 1945—Cut that out.

Do you have any records of any kind to show whether you contacted Duque and Frazzini from the 24th day of May, 1945, until we met in Tucson?

A. That, I do not know.

Q. Do you have any such record or recollection?

A. I have not reviewed the file recently.

Q. Do you recall whether or not you wrote any letters to them during that time?

A. I don't recall that I did.

Q. Now, we met in Tucson on May 28th, 29th and 30th—Isn't that correct?

A. It must have been about that time. It was a nice trip, anyway.

Q. Well, while you were there did you make any inquiry from Duque and Frazzini as to how much their expenses were up until that time, including payroll and rental of equipment?

A. Oh, I don't think Duque and Frazzini had enough records to show that.

Q. That is not the question.

Mr. McCall: This is off the record.

(Discussion between counsel off the record.)



Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Mr. Monteleone: Will you please read the question?

(The question is repeated by the Notary Public.)

A. Oh, I think I made some inquiry but I don't think I got any information as to the payroll.

Q. (By Mr. Monteleone): Did you make any inquiry from Basich Brothers Construction Company as to the amount of the payroll?

A. I am inclined to think that Mr. Thompson gave me those figures or Basich Brothers Construction Company did—Mr. Basich did—I don't remember which.

Q. Did Mr. Duque or Mr. Frazzini give you the amount of the rental of equipment?

A. Mr. Basich did. I don't think that Duque and Frazzini had it, but Basich Construction Company gave me some yellow sheets which had that information on them, which was in their office.

Q. Mr. Basich at that time gave you the amount of the payroll and the amount of the rental for equipment?

A. Well, I don't think he knew at the time but he gave me what he had.

Q. You mean at that time?           A. Yes.

Q. You knew at that time that the labor bills and the rental of equipment and the bills payable far exceeded what they had earned on the contract, did you not?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. Well, that was Mr. Basich's statement. He contended that they owed more than they earned.

Q. Well, Mr. Basich said that Duque and Frazzini were far behind what they had earned on account of labor and material bills and rental of equipment?

A. That is what Mr. Basich contended.

Q. What did you say to Mr. Basich when he gave you that information?

A. I don't recall that I told him anything. I think I probably told him——

Mr. McCall (Interrupting): Just a minute. The question has been answered. The answer is not as to what you think you may have told him.

Q. (By Mr. Monteleone): Now, did you make a check, while you were in Tucson on the last occasion, to see how much material was being produced by Duque and Frazzini?

A. Well, I am not certain whether Mr. Basich's office furnished me with the truck yardage, or not. I imagine he did.

Q. From the information that Basich Brothers Construction Company furnished you at that time, you knew, did you not, that Duque and Frazzini were not averaging 800 cubic yards per plant per day?

Mr. McCall: All of this refers to the last trip that the four of us made to Tucson?

Mr. Monteleone: That is right.

A. I don't think that I computed it but I think that was probably correct.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. (By Mr. Monteleone): You knew that——

A. Of course, incidentally, I might say that the only information that Basich Brothers Construction Company was prepared to show me as to yardage was the truck yardage, which was different from actual yardage.

Q. I show you a letter dated May 23, 1945, from Basich Brothers Construction Company to Duque and Frazzini and ask whether or not you recall receiving this letter?

A. I undoubtedly received it. [54]

Q. Calling your attention to the letter of May 23, 1945, I will read this portion of it: "Now, therefore, you, Duque & Frazzini, as Principal on said bond, and you, Glens Falls Indemnity Company, a surety thereon, are again notified that said Duque & Frazzini have failed to correct their said default in that they are not prosecuting said work with sufficient workmen and equipment to insure its completion within the specified time; furthermore, that instead of each of the plants referred to in said contract of date February 7, 1945, producing 800 cubic yards of suitable material as therein required, each of said plants is producing an average of approximately 300 cubic yards a day." Do you recall receiving that information?

A. I don't remember, but I probably did.

Q. So, you did know, after reading this letter dated May 23, 1945, that Duque and Frazzini had

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

not been averaging 800 cubic yards per day from each plant but had only been averaging 300 cubic yards per day?

A. That is what you said in that letter.

Q. Did you investigate as to whether or not this information, as stated by Basich Brothers Construction Company was true or untrue?

A. I do not remember.

Q. You do not remember whether you did or did not?

A. That is right. I think that was received just a few days before we went over to Tucson, if I recall.

Q. Now, at the time you received this letter of May 23, 1945, did you acknowledge the receipt of the same in any other manner except by this letter of Mr. McCall's dated June 8, 1945? A. No.

Q. Did you discuss the contents of the letters of May 23rd, May 24th, or June 1st, 1945, to which I have previously referred, with Mr. A. L. Basich, or any one connected with Basich Brothers Construction Company, in any other manner than you have already referred to?

A. I do not recall that I did.

Q. Now, when you were in Tucson, on this last occasion, which was the 28th, 29th and 30th of May—my diary indicates that and I believe that is correct. I hope so, any way. Did you make any recommendation to Duque and Frazzini in connection with their operations? A. No, I don't think so.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. What, if any matters did you discuss with them in connection with the operation?

A. Well, I don't remember. I couldn't remember that now.

Q. Did you make any record as to what you discussed or observed at that time?

A. I probably did. I probably wrote a report to the San Francisco office after coming back.

Q. Have you any recollection of what it contained?

A. It was just as to what had transpired there.

Q. What do you recall as to the contents of the report?

A. I related the different conferences we had with you and Mr. Basich and those various other things.

Q. All that you stated to your San Francisco office in your report was what actually transpired while we were there?

A. That is right.

Q. Did you advise your San Francisco office as to the complaint that Basich Brothers Construction Company were making from time to time as to the progress of the contract?

A. I sent them copies of your letters.

Q. Now, on June 8, 1945, you—and when I refer to “you” throughout this deposition, I am referring to you as a representative of the Glens Falls Indemnity Company or to the Glens Falls Indemnity Company, itself—Did you receive a copy of the letter which I now exhibit to you?

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

A. That looks like one we received. It is quite a few pages long.

Q. In that letter of June 8, 1945, there was enclosed a copy of a letter from the United States Resident Engineer, B. C. Woolums—isn't that true?

A. Yes, I have a recollection that some sort of enclosure of what purported to be a copy of a letter from him was enclosed.

Q. I show you what purports to be a copy of the letter from him and ask you whether or not you think that is his letter?

A. I have no recollection of the letter, but if you say it is a copy, it must be.

Q. Now, in that letter of the United States District Engineer, it called attention to the fact that the Government job had been shut down from time to time on account of lack of material.

Mr. McCall: I object to that on the ground that it is calling for a conclusion. He would not know that.

Mr. Monteleone: I say the letter calls that to your attention?

A. I don't remember what was in the letter. I would have to see it.

Q. Do you wish to see the letter now?

A. Well, the letter speaks for itself.

Q. Did you do anything in connection with the complaint from any letter—particularly the com-

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

plaint made in the letter of June 8th and the complaint of the United States Engineer?

A. I referred it to Mr. McCall.

Q. You referred it to Mr. McCall?

A. Yes.

Q. Did you make any investigation so far as Duque and Frazzini were concerned?

A. I don't remember.

Q. Did you contact Duque and Frazzini?

A. I don't remember that.

Q. Did you contact Basich Brothers Construction Company or any one connected with Basich Brothers Construction Company in connection with the matter?

A. I don't remember that I did. I don't believe that I did but I am not sure.

Q. Now, up to the time you received this letter of June 8, 1945—did you—when I say "you" I mean the Glens Falls Indemnity Company, serve or mail—if served on or mailed, to Basich Brothers Construction Company any notification or any letter aside from the letters sent by Mr. John McCall?

A. Well, so far as I know, no—that is any that I personally know of.

Q. Now, after you received this letter of June 8th, you also received a further letter from Basich Brothers Construction Company on June 9, 1945, did you not—A copy of which—addressed to Duque and Frazzini, a copy of which was sent to your office?

A. I think we got a copy of that.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. Did you, or any one for your company, make any suggestions to Basich Brothers Construction Company as to whether you desired Basich Brothers Construction Company to continue with the contract or whether your company desired to make arrangements for the prosecution of the work?

Mr. McCall: I object to that as it assumes that he had a right to go to Basich Brothers Construction Company to make suggestions.

Mr. Monteleone: I want to know if he made any suggestions.

Mr. McCall: What kind of suggestions?

Mr. Monteleone: I just want to know if he made any suggestions to you or to the Company?

A. I don't know. I did not, personally.

Q. (By Mr. Monteleone): Do you know whether or not at any time, up to the present time, your company ever notified Basich Construction Company that they desired to carry on the work of Duque and Frazzini after Duque and Frazzini left the job?

Mr. McCall: I object to that as assuming that they had a right or obligation to suggest that to them.

Mr. Monteleone: I am not assuming that so far as any rights were concerned, but did that company ever insist, or not?

A. So far as I am concerned, personally, no.

Q. (By Mr. Monteleone): Now, I will call to your attention a letter dated June 23, 1945, ad-



Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

dressed to Basich Brothers Construction Company, signed John E. McCall, and ask whether or not you have had seen the letter or the contents of the letter before it was sent to Basich Brothers Construction Company?

A. Oh, I undoubtedly read it either before or after it was mailed. I don't recall which.

Q. Now, did you converse with Mr. McCall, so far as the contents were concerned, before the letter was mailed?           A. That, I don't recall.

Q. Do you know of any other letter or notification sent to Basich Brothers Construction Company in reply to their previous letters addressed to your company, copies of which were sent to your company, aside from the copies of letters sent by Mr. McCall, prior to June 23rd, 1945?

A. Will you read that?

Mr. Monteleone: Will you please read the question?

(The question is repeated by the Notary Public.)

A. I have no personal knowledge of that.

Q. (By Mr. Monteleone): Have you ever seen any such records?           A. No, I have not.

Q. Have you ever inquired as to any information as to whether or not such letters existed?

A. No, I have not.

Q. Now, have you read the First Amended—Proposed First Amended Answer of Glens Falls Indemnity Company to the Complaint of Basich Brothers Construction Company?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. Well, I probably have read it. I don't know. I haven't read it with extreme care because I am no lawyer.

Q. I understand, but you read the proposed amended answer before it was filed—is that right?

Mr. McCall: I will stipulate that he did not even see it.

Q. (By Mr. Monteleone): Now, in this proposed amended answer, on page 11 thereof, it alleged that the plaintiff, Basich Brothers Construction Company, failed to comply with the conditions precedent contained in the bond, in that Basich Brothers Construction Company failed to notify Glens Falls Indemnity Company within twenty days after they acquired information on the default of Duque and Frazzini, that they were not producing 1600 cubic yards of material per day and did not commence work on the 19th day of February, 1945, as called for in the contract.

Mr. McCall: There is no correction, Mr. Monteleone, at all.

Q. (By Mr. Monteleone): Now, you learned of that situation, did you not, when you received a copy of a letter addressed to Duque and Frazzini bearing the date of April 5, 1945, isn't that true?

A. Well, the letter said that. I guess that that is what it said.

Q. Now, when did you receive that letter—a copy of that letter bearing date April 5, 1945?

A. Well, I suppose I received it.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. When you received that letter, did you notify Basich Brothers Construction Company that they had failed to give you notice within twenty days and that you were going to stand on the condition in the bond? A. Personally, I did not.

Q. Do you know whether or not any such information had been given to Basich Brothers Construction Company at any time by any person connected with the Glens Falls Indemnity Company that they would stand on that provision of the bond because they did not receive such notice within twenty days? A. Personally, no.

Q. In this proposed amended complaint, on page 14, is contained the allegation, on information and belief—that on or prior to the 8th day of June, 1945, the subcontractors, Duque and Frazzini, had abandoned work under the said alleged subcontract, which so compelled the plaintiff to cease operations thereon. Now, when if at all, did you first receive information the Duque and Frazzini had abandoned the work under the contract?

A. That, I don't remember.

Q. With reference to the 8th day of June, 1945, was it on that day or shortly thereafter?

A. Well, so far as I know, the letters which you mentioned as having been written, are the only notices that I had.

Q. So, the only information that you had, then, would be the letters written to your company by the Basich Brothers Construction Company?

A. So far as I know, yes.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Q. Did you receive any letters or information from Duque and Frazzini, direct?

A. Not so far as I remember.

Q. Did you receive any information that Duque and Frazzini were compelled by Basich Brothers Construction Company to cease operations?

A. I don't remember that.

Q. You do not remember of receiving such information?      A. No.

Q. Your answer was no?

A. I don't remember of it, no.

Q. Now, you know, as alleged in the proposed amended answer, commencing on page 14, that you are informed and believe and therefore allege that from the 11th day of February, 1945, until on and after the 8th day of June, 1945, the plaintiff violated the terms of the alleged subcontract and, particularly, Article 16 thereof in that plaintiff paid to or for the account of said subcontractor, on account of said subcontract work, large sums of money, in excess of 90% of the engineers' estimate. Now, you knew that prior to the 8th day of June, 1945; did you not?

A. No, I don't think I knew it.

Q. You received words from the Basich Brothers Construction Company prior to that, did you not?

A. Well, Mr. Basich was contending that when we were there in May.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. What did you tell Mr. Basich about that when he said that?

A. I don't think I told him anything.

Q. Did you tell him that he was violating Article 16 of the contract in doing so?

A. No, sir, I did not tell him.

Q. Did you at any time, or did your company at any time prior to the filing of the answer to the plaintiff's complaint, notify Basich Brothers Construction Company that they were violating Article 16 of the contract by paying these large sums of money in excess of 90% of the engineers' estimate?

A. I did not, personally.

Q. Do you have any knowledge of it?

A. No, I have not.

Q. In what respect do you contend that Basich Brothers Construction Company were violating Article 16 by paying these large sums of money in excess of 90%?

Mr. McCall: I object to that on the ground that the contract speaks for itself and is the best evidence.

Mr. Monteleone: I think that is a legal matter, Mr. McCall.

Q. (By Mr. Monteleone): Now, on page 15 of the "Proposed Amended Answer" it is alleged that Basich Brothers Construction Company furnished its own employees to the subcontract work. Do you know of any employees which Basich Brothers Construction Company furnished to Duque and Frazzini—of your own knowledge?

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

Mr. McCall: You mean as to his own personal knowledge?

Mr. Monteleone: Yes, of your own knowledge.

A. Not to my own personal knowledge, no.

Q. (By Mr. Monteleone): And from your investigation which you carried on, as you have already testified to, did you ascertain any information which would show that Basich Brothers Construction Company had concealed from the Glens Falls Indemnity Company any payment of "large sums of money" to Duque and Frazzini?

A. No.

Mr. McCall: I object to that as that is a legal question as to whether or not he concealed any legal evidence? That is asking for a legal conclusion.

Mr. Monteleone: I will withdraw it and put it this way.

Q. (By Mr. Monteleone): Did you find anything to the contrary from what you had been informed by Basich Brothers Construction Company as you have testified to in this deposition, with reference to payments made on the Duque and Frazzini contract, which was not substantiated?

A. What was that?

Mr. Monteleone: Will you please read the question?

(The question is repeated by the Notary Public.)

A. No. I don't understand it.

Q. You do not understand it?

A. No.

Plaintiff's Exhibit No. 23—(Continued)

(Deposition of John H. Bray.)

Q. Was there any information furnished to you which you testified to as you recited here, on your investigation, which proved to be false and untrue.

A. I still do not understand that question.

Q. Your answer—the Proposed Amended Answer of the Glens Falls Indemnity Corporation charges that the Basich Brothers Construction Company concealed and suppressed certain facts from the Glens Falls Indemnity Company. Now, do you know of any facts that Basich Brothers Construction Company concealed or suppressed from the Glens Falls Indemnity Company in connection with the Duque and Frazzini contract?

Mr. McCall: I object to that as calling for a conclusion of the witness and assuming, further, that the witness gave to the attorney the information from which this answer was drawn, which is not true.

Mr. Monteleone: I am asking him if he knows of any.

A. Not from my own personal investigation.

Q. (By Mr. Monteleone): From your investigation did you acquire any information that Basich Brothers Construction Company had concealed from the Glens Falls Indemnity Company any matters in connection with this contract?

Mr. McCall: I object to it on all of the grounds heretofore stated and further as calling for a conclusion of the witness and it asks him to assume a legal conclusion.

Plaintiff's Exhibit No. 23—(Continued)  
(Deposition of John H. Bray.)

A. Oh, yes, I have conferred with him.

Q. Do you know of any other agent or employee of the Glens Falls Indemnity Company that he has conferred with excepting yourself?

A. I don't know of any.

Mr. Monteleone: I believe that is all.

Mr. McCall: I have no questions at this time.

Mr. Monteleone: It may be stipulated that this deposition may be signed before any Notary Public?

Mr. McCall: It is so stipulated.

/s/ JOHN H. BRAY.

Subscribed and sworn to before me this 25th day of September, 1946.

[Seal] /s/ JOHN E. McCALL,  
Notary Public in and for the County of Los Angeles, State of California.

State of California,  
County of Los Angeles—ss.

I, Charles G. Murray, a Notary Public in and for the County of Los Angeles, State of California, do hereby certify:

That John H. Bray, was by myself, before the commencement of this deposition, duly sworn to testify the truth, the whole truth and nothing but the truth; that said deposition was taken on the 4th day of September, 1946, commencing at the hour of 2:00 o'clock p.m. at Room 926, Rowan Building, Los Angeles, California.



Plaintiff's Exhibit No. 23—(Continued)

That said deposition was written down in shorthand by myself and was thereafter transcribed into typewriting; and I further certify that the foregoing 72 pages are a full, true and correct transcript of my said shorthand notes.

I further certify that by stipulation and agreement of counsel said deposition may be signed before any Notary Public.

I further certify that I am not related to any of the parties to this action nor interested financially in the outcome of the same, nor am I related to or associated with counsel on either side of the case.

In Witness Whereof I have hereunto subscribed my name and affixed my official seal this 17th day of September, 1946.

[Seal] /s/ CHARLES G. MURRAY,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires May 21, 1947.

[Endorsed]: Filed June 18, 1947.

## PLAINTIFF'S EXHIBIT No. 24

In the District Court of the United States, Southern  
District of California, Central Division

No. 5021-P.H.

BASICH BROTHERS CONSTRUCTION  
COMPANY, a corporation,

Plaintiff,

vs.

GLENS FALLS INDEMNITY COMPANY, a  
corporation, and ANDREW DUQUE and  
CARSON FRAZZINI, co-partners doing busi-  
ness under the firm name of DUQUE AND  
FRAZZINI,

Defendants.

## DEPOSITION

Be It Remembered that, pursuant to oral stipulation of Counsel for the parties hereto, that on Monday, January 20, 1947, commencing at the hour of 1:30 o'clock p.m. thereof, at the law offices of Richard Blakey, 26 West Second Street, Reno, Washoe County, Nevada, before me, Jeanne Brannin, a Notary Public in and for the County of Washoe, State of Nevada, personally appeared Carson Frazzini, one of the defendants herein, produced as a witness, who, being by me first duly sworn, was thereupon examined and interrogated as a witness in said cause.

(Plaintiff's Exhibit No. 24—(Continued))

Stephen Monteleone, Esquire, 714 West Olympic Building, Los Angeles 15, California, appeared as attorney for the plaintiff, Basich Brothers Construction Company, a corporation.

John E. McCall, Esquire, 458 South Spring Street, Los Angeles, California, appeared as attorney for the defendants, Glens Falls Indemnity Company, a corporation, and Andrew Duque and Carson Frazzini, co-partners doing business under the firm name of Duque and Frazzini, defendants.

It was stipulated between counsel for the respective parties that the Deposition be signed before Jeanne Brannin a Notary Public, after it had been transcribed, and that the original of said Deposition be mailed to the United States District Court, the Clerk thereof, Federal Building, Los Angeles, California.

It was further stipulated that the said Deposition should be reported in Stenotypy by Jeanne Brannin, an official court reporter and disinterested person, and thereafter transcribed by her into longhand typewriting.

(Plaintiff's Exhibit No. 24—(Continued))

CARSON FRAZZINI,

having been first duly sworn, deposes and says:

Direct Examination

Mr. Monteleone: Q. Will you state your name in full.

Witness: A. Carson Frazzini.

Q. Where do you reside?

A. 415½ Vassar Street, Reno, Nevada.

Q. Are you a member of the firm of Duque and Frazzini? A. I am.

Q. How long have you been a member of that firm? A. Since 1943.

Q. And still doing business as Duque and Frazzini? A. Yes.

Q. What is the nature of your business?

A. Equipment rentals at this time, solely.

Q. During the year 1945 what had been the business of Duque and Frazzini?

A. Road and airport construction work.

Q. How long had you been engaged in that line of work prior to February 7, 1945?

A. Roughly—18 months.

Q. I presume that Mr. John McCall, attorney for the Defendants, has been interviewing you all morning, has he not? A. He has not.

Q. Well, he has interviewed you?

Mr. McCall: I object on the ground it is irrelevant and immaterial.

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

Mr. Monteleone: Will you answer the question. He has interviewed you this morning, has he not?

Witness Frazzini: No, he hadn't exactly interviewed me. Yesterday I met him at the airport and took him to his hotel and he gave me some copies of Depositions and Court proceedings to read and I read those and I was taking them back to him this morning, and I had breakfast with him.

Q. What I'm getting at is this: Mr. Frazzini, not that anything transpired between you and Mr. McCall, but did he advise you as to the nature of the taking of this Deposition?

A. No, he did not. Yesterday afternoon——

Q. Just answer the question, if you please, without any explanation. A. No.

Q. Are you familiar with the nature of a Deposition? A. I am.

Q. There is no need of my explaining it to you?

A. I think not.

Q. Now, you recall entering into a contract with Basich Brothers Construction Company on the 7th day of February, 1945? A. I do.

Q. Now, prior to that time had you ever known any of the members of Basich Brothers Construction Company, or anyone connected with Basich Brothers Construction Company personally?

A. Yes, I knew Nick Basich previous to that time.

Q. Had you ever had any dealings with him prior to that time?

(Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. Yes, I dealt with him regarding the purchase of a power shovel in 1938.

Q. Outside of that you had never done any business with Basich Brothers Construction Company or anyone connected with Basich Brothers Construction Company, isn't that true?

A. Not that I know of.

Q. And you had never been in any manner—when I say you, I mean either you or your partner, Duque—interested in any way with the Basich Brothers Construction Company?

A. No, we had not.

Q. And you are not in any manner now interested in that Company?      A. You mean—

Q. Outside of the litigation.      A. No.

Q. Now, prior to the time that you signed the contract dated February 7, 1945, had you done any business with Glens Falls Indemnity Company?

A. Yes, we had.

Q. And for what period of time had you been dealing with the Glens Falls Indemnity Company?

A. Well, Glens Falls had bonded Duque and Frazzini on one contract prior to that time.

Q. And that was handled through what office?

A. I think actually through the San Francisco office, although our dealings were ordinarily with the Reno office, and on that particular job through the Salt Lake Office, I couldn't really say.

Q. Now, in connection with the contract with Basich Brothers with what office did you initially handle the transaction?

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

Mr. McCall: I object on the ground it is irrelevant, incompetent and immaterial.

Mr. Monteleone: Through what state?

Witness Frazzini: The Los Angeles office.

Q. Had you had anything to do with the San Francisco office in connection with the matter?

Mr. McCall: I object to that as having been asked and answered.

Mr. Monteleone: Will you answer the question?

Witness Frazzini: I could not say for certain but I believe at the time that I was negotiating a contract with Basich Brothers that I called the San Francisco office to find out whether they would consider bonding that particular job as that was our procedure to obtain bonds.

Q. And that was before the contract was actually signed, is that correct?

A. That is correct.

Q. And what information did you get from the San Francisco office?

Mr. McCall: I object to that as calling for a conclusion and not relevant or material, and has no bearing on this case whatsoever.

Mr. Monteleone: Will you answer the question?

Witness Frazzini: Will you repeat the question?

(Question read by reporter.)

Witness Frazzini: A. As I remember it, I believe they told me to contact Mr. Harry Leonard of

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

the Glens Falls Los Angeles Office and submit to him the facts concerning the bond and they would advise me later on it.

Q. And did you do that?

A. As I remember it, I did not check with them further, but I saw Mr. Harry Leonard and he told me that he would definitely see about the bond and that was as far as I know anything about that bond until it was presented to me for signature.

Q. I see. Now, did that take place before you signed a contract—that you first saw Mr. Leonard?

A. Yes, it did.

Q. Did you tell him then what the contemplated contract was to be?      A. In dollars and cents?

Q. Yes.      A. Yes.

Q. And did you tell him how you contemplated handling that job?

Mr. McCall: I object to that. It has not been testified that the bond was written.

Mr. Monteleone: Will you answer?

Witness Frazzini: Will you repeat the question?

(Question read by reporter.)

Witness Frazzini: As I remember it, I believe Mr. Leonard asked me if we had all of our own equipment to do that job and if it was suitable for the job.

Q. And what did you tell him?

A. And I think I told him that I believed it was.



(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

Q. Did you tell him that you contemplated renting any equipment?      A. Yes.

Q. Yes?

A. (Continuing): A small amount was all we calculated to rent.

Q. You told him what equipment you had?

A. Yes.

Q. And did he ask you any other questions?

A. Just a moment, I don't believe I told him specifically what equipment we had, but I remember his asking me if we had suitable equipment to do that job.

Q. Now, do you remember when you went to Basich Brothers office to sign the contract dated February 7, 1945? And did Mr. Basich ask you about your bond?      A. I do.

Q. And did you not telephone Mr. Leonard and have Mr. Basich talk to Mr. Leonard over the phone?      A. I believe that is correct.

Q. And at that time Mr. Basich asked Mr. Leonard whether or not the Company would write a bond for you?

A. He was talking to Mr. Leonard on the phone, I believe for the purpose of ascertaining whether or not they would write a bond but I didn't hear the other part of the conversation so I can't say as to that.

Q. And that was before the contract was prepared?      A. It was.

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Now, before you signed the contract, you first contacted Mr. Nick Basich by long distance phone from Tonopah, did you not?

A. Mr. Duque contacted Mr. Basich by phone from Reno, I believe.

(Turning to ask Mr. Duque.)

Mr. Monteleone: Don't ask anyone, just testify as to what you know.

Witness Frazzini: I believe Duque contacted Mr. Basich by phone from Reno.

Q. How long was that before the contract was actually prepared and signed?

A. Oh, I would say—roughly—three to four days.

Q. And did you, after Mr. Duque contacted Mr. Basich, visit the site where the work was to be done?      A. I did.

Q. And how much time did you spend there?

A. We spent on the job about 40 minutes.

Q. Mr. Basich wasn't along with you at the time was he?      A. He was not.

Q. And when you say "we" you mean Mr. Duque and yourself?      A. I do.

Q. And then after you checked the site of the work did you again contact Mr. Basich before the contract was signed?      A. I did.

Q. By what means did you contact him?

A. We phoned him; from a hotel in Tucson. He was in Los Angeles.

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

Q. And did you ever send him any wire?

A. We did.

Q. Now, when you came to Los Angeles, you went to Mr. Basich's office and signed the contract after it was prepared, is that correct?

A. That is correct.

Q. And it was at that time that Mr. Basich talked to Mr. Leonard of Glens Falls Indemnity Company, is that true?

A. It was.

Q. And after the contract was prepared was it signed the same day?

A. The contract was prepared over the better part of two full days and was signed on the evening of the second day.

Q. And did you take a copy of that contract to Glens Falls Indemnity Company?

A. No, I didn't.

Q. Did you ever give them a copy of that contract?

A. I do not believe that I ever did.

Q. You gave a deposition here recently in another case?

A. I did.

Q. I'll ask you if you didn't testify as follows: "Referring to the copy of the subcontract—

Mr. McCall: I'll ask Mr. Monteleone if that Deposition pertains in any way to this case.

Mr. Monteleone: No, it isn't.

Mr. McCall: I object then to this Deposition being used in any way whatsoever because it has no bearing on this case.

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Mr. Monteleone: I'll ask you whether or not—I'm showing you the Deposition, and asking you if that isn't your signature, Carson Frazzini? (Showing to witness.)

Witness Frazzini: I believe so.

Q. And that is a Deposition that was taken in the case of the United States of America for the F. Rondstadt Hardware Company, Baum and Adamson, and Stuckey Auto Supply Company, plaintiffs, versus Basich Brothers Construction Company and the Hartford Indemnity Company in the District Court of the United States for the District of Arizona? A. That is correct.

Q. And this Deposition was taken at Reno, Nevada, on the 31st day of December, 1946, is that not true? A. I believe it is.

Q. Now, I'll ask you if this question was not asked you: and I'm reading from page four, line 15, in which you are referring to the contract. "Q. Do you have a copy of it? A. I don't have a copy at this particular time but there are copies available either from the Glens Falls Indemnity Company, Los Angeles, or Basich Brothers who would have a copy of it, or the former attorneys at Tucson, they have a new name now, have a copy of it also, the Union had a copy of it in Tucson." Did you so testify? A. I did.

Q. Now, what copies did Glens Falls have available that you were referring to?

A. Some photostatic copies of the contract.

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

Q. And when were these photostatic copies of the contract sent to Glens Falls Indemnity Company?

A. They were not sent to the Glens Falls but were made by them for their use.

Q. And when were they made with reference to the 7th day of February, 1945?

A. I could not say the date those copies were made.

Q. Well, can you say approximately when it was. Was it within a day or so after the contract was signed?

A. No, it is my guess that it would be—was possibly four months after the contract was signed. And if you wish me to say—

Q. No, just answer my question, and Mr. McCall who is representing Glens Falls Indemnity Company and with whom you have been conferring all morning can go into that matter.

Mr. McCall: Mr. Monteleone, may I interrupt the record long enough to introduce the attorney for Mr. Duque and Mr. Frazzini.

Mr. Goldwater: Goldwater. Bert Goldwater.

Mr. McCall: I'm John McCall and I represent the defendant in this action, the Glens Falls Indemnity Company, Mr. Goldwater represents Duque and Frazzini and Mr. Monteleone represents Basich Brothers Construction Company.

Mr. Goldwater: Well, may the record show that I represent Duque and Frazzini but we reserve the

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

right that we are not in the case, inasmuch as no jurisdiction has been obtained over Duque and Frazzini.

Mr. McCall: That's as I understand it.

Mr. Goldwater: I note a mis-statement of evidence by Mr. Monteleone. He said that Mr. Frazzini had conferred all morning with Mr. McCall. I don't think that was a correct statement.

Mr. Monteleone: Well, Mr. Frazzini called Mr. McCall at the Hotel while I was there and Mr. Frazzini came there and Mr. Frazzini and Mr. McCall came out together so I assumed that they had been conferring during the morning. That's where I based my statement.

Mr. Goldwater: You may have an argument there. Mr. Frazzini testified that he had breakfast with Mr. McCall.

Mr. Monteleone: Well, that's immaterial to the case anyhow. Q. Now, did the Glens Falls Indemnity Company request that you send them any copy of the contract before you forwarded the photostatic copy you referred to?

Witness Frazzini: A. I did not forward a photostatic copy to them at all. I loaned my copy of the contract to Mr. Bray, I believe, in Tucson while he was there and he had some photostatic copies made.

You haven't answered my question. Before that time had Glens Falls Indemnity Company ever requested you for a copy of this contract dated February 7, 1945?

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

A. Actually I couldn't say that they had or had not. I don't remember of them requesting one.

Q. Did you ever have any correspondence in your file with them which would indicate that?

A. No, I have not.

Q. Did you and Mr. McCall go into your office to check your files this morning?

A. We did not.

Q. And where did you and Mr. McCall go to?

A. We went to 201 East Second Street.

Q. How long a time did you spend there?

A. Oh, I should say roughly an hour.

Q. And did you go through all your files at that time?

A. No, we didn't go through any files, and I should like to make a correction.

Q. Never mind about your correction. You mean of your testimony?

A. I do. That we did not go there to look at any files or see anything but went out there to visit the site of our present yard and office.

Q. Did you go into the records while you were there?

A. No, I showed Mr. McCall some pictures that I had of the job and that is all.

Q. Mr. McCall told you before he went there that he would like to examine these files didn't he?

A. He did not.

Q. But if I told you that he told me that, would you state that that was not a fact?

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. I would state that he did not tell me that.

Q. Now, who was your general superintendent in connection with this job in Tucson with the Basich Brothers?

Mr. McCall: I object to that as assuming a fact not in evidence. There has been nothing said about his having a General Superintendent.

Mr. Monteleone: Do you have one?

Witness Frazzini: I would say that we do not have one.

Q. Who was Clarence Hampden?

A. He was a foreman for us who may have been classified as a Superintendent to come under the union rules, but actually I fulfilled that capacity for the Company.

Q. And what were his duties at the plant?

A. During the first part of his tenure with us he over-looked the construction of a screening plant that we were setting up to produce concrete aggregates and later on I believe he may have been carried on the payroll as a General Superintendent because of union obligations.

Q. Now, he was hired by you? A. Yes.

Q. When I say "you" I mean Duque and Frazzini. A. Yes.

Q. Now, prior to the time you signed this Basich Contract, you had completed two jobs had you not, one a State job at Blythe and another one in Nevada? A. As Duque and Frazzini?

Q. Yes. A. No, we had not.



(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

Q. Had you completed any job at Blythe?

A. I had, yes.

Q. You yourself? A. Yes.

Q. That was not a partnership job?

A. It was carried under the name of Carson Frazzini, although Mr. Duque had an interest in the job.

Q. And was there another job in Nevada that you and Mr. Duque had completed about this time?

A. Not as a contract.

Q. What was it?

A. We worked at the Tonopah Airport, although Carson Frazzini had the contract work and Mr. Duque owned the equipment on the job.

Q. Now, who owned the equipment that was moved in on to this Basich Brothers job?

A. That was owned by numerous firms.

Q. Just state who they were. I mean the equipment that you moved in when you started the job.

A. At the start only?

Q. Yes.

A. At that time virtually all of the equipment was owned by Andy Duque and Carson Frazzini, and a man named Frank Hill from Silver Peak, Nevada.

Q. And what equipment was moved in on that job?

A. The major units were: one crushing and screening power plant; one rock screening plant; two large diesel caterpillar tractors and carry-alls; and a number of small dump trucks.

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Now, who paid to have that equipment moved in on that job?

A. Duque and Frazzini paid for all of the moving that they were able to pay for.

Q. And when you say all—as a matter of fact they paid all of the bills up to the time you started your operation, didn't they?

A. No, they did not.

Q. Again calling your attention to your Deposition—(looking through Deposition) and I'll get to that—Well, I'll ask you this question, isn't it a fact, Mr. Duque—

Mr. McCall: Mr. Frazzini.

Mr. Monteleone: Frazzini, that Duque and Frazzini paid all the bills of the men until the men arrived on the job and started work on the job, and then from that point Basich Brothers took the payroll and paid it until you had completed the work, as far as Duque and Frazzini went?

Witness Frazzini: That is correct.

Q. Well, that's what I was driving at. Now when did you first operate with reference to the date the contract was signed.

A. By that do you mean when did we start producing materials, or when did we start erecting our plants?

Q. Well, when did you start erecting your plants with reference to the 7th day of February, 1945?

A. About February 11, 1945.

Q. And when did you start producing?

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

A. Roughly February 25, 1945.

Q. And what plant did you first start to produce from?

A. A crushing and screening plant that we brought into Tucson, commonly called the ABC plant.

Q. Now with reference to the main job, when I speak of the main job, I mean the Davis-Monthan Air Field, where was your operation carried on?

A. At the Golab Ranch of Pantana Wash. I know it was about five miles from Tucson.

Q. And at that time did Basich Brothers have any operations of their own at this particular spot where your operation was, that was separate and distinct from your operation?

A. During the time we were in that pit?

Q. Yes. A. Yes, they did.

Q. They had a black plant there did they not?

A. They did not.

Q. The plant they had was how far from your operation?

A. Oh, about 2500 feet from one of our plants.

Q. And they—that plant—had nothing to do with your operation? A. It did not.

Q. And they also had a batch plant, did they not? A. That is right.

Q. And how far was that located from your operation?

A. That was located several hundred feet from one of our plants and possibly 400 feet from one of the plants we erected.

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. And that was separate and distinct from your own operation?      A. It was.

Q. And were they both established before you moved in on that job?

A. No, they were possibly—pieces of them were being brought in during the first month or two we were there, but they were erected I must say after we arrived in Tucson.

Q. However, you knew they were contemplating erecting these plants at the time you signed this contract on the 7th day of February, 1945? Isn't that true?

A. That is not true in that they did not directly advise me that they were erecting them and I did not give the matter any thought although had I stopped to think about it I would have so known.

Q. Now, after the contract was signed did you give Mr. Leonard of the Glens Falls Indemnity Company any instructions as to what to do with the bond?      A. I did not.

Q. You signed a bond, did you not?

A. I did.

Q. And where were you when you signed the bond?

A. At Duque and Frazzini's office at Tucson, Arizona.

Q. Now, did Duque and Frazzini establish and erect their own office at the job?      A. Yes.

Q. And when was that office erected with reference to the 7th day of February, 1945?

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

A. It was erected afterwards, the exact date of which I do not know.

Q. And Duque and Frazzini made all of their own arrangements in connection with the erection of that office, did they not?      A. They did.

Q. They purchased their own material?

A. Yes.

Q. And supervised the erection of that plant?

A. Yes.

Q. Now, did you have an office force on the job after your office was erected?      A. Yes.

Q. And what did your office consist of?

A. It consisted of one man.

Q. What were his duties?

A. His duties were to take the men's time and procure materials for our operation.

Q. And that man was hired by Duque and Frazzini?      A. He was.

Q. And under Duque and Frazzini's supervision?      A. Yes.

Q. Now, all of your equipment that was moved on to the job prior to the commencement of your operation, was under the direction and supervision of Duque and Frazzini, were they not?

A. Yes.

Q. And all men employed to move the equipment were hired by Duque and Frazzini and under your supervision, is that true?

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

A. On all the equipment that came in on the early part of the job, you mean?

Q. Yes.

A. No, they were not. Basich Brothers brought some of them in.

Q. What did Basich Brothers bring in?

A. They brought in, I believe, a motor patrol to use in their operation.

Q. To use in their operation? A. Yes.

Q. That was separate and distinct from the operation of Duque and Frazzini?

A. Well, I presume so, although it was all for the same job for the Basich Brothers.

Q. But it had nothing to do with your operation? A. The motor patrol?

Q. Yes.

A. It had nothing to do with the operation—our operation.

Q. Did they rent that from you?

A. Well, they were supposed to, although we never received any rental for it.

Q. But they were to pay you a rental for it, is that true? A. That is correct.

Q. Outside of that, all of the men moving in your equipment were under your direct supervision, is that true? A. They were.

Q. And the plants were erected, that is your plants as distinct from the Basich Brothers plant, were all erected under your direct supervision, isn't that true? A. That is correct.

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

Q. And by men whom you were able to hire and fire, is that not true? A. That is true.

Q. Now, did you have a timekeeper of your own on that job?

A. In the early part of the job we did.

Q. And was that a man you hired yourselves?

A. It was.

Q. That man was under your direct supervision is that correct? A. That is correct.

Q. Now, what was the name of that man, do you recall? A. Johnson.

Q. What were his duties?

A. Johnson was supposed to check the time cards each day when he was able to and go down town and buy various materials.

Q. Now, all materials that were purchased in connection with the operation by Duque and Frazzini were under the direct supervision of Duque and Frazzini? A. That is correct.

Q. All of your purchases were only subject to your direction that is Duque and Frazzini—no one else? Isn't that true?

A. No, I wouldn't say that because most of the firms that we applied for—I believe, I do not know this to be a fact, but when asked what firm we were working for why we told them Basich Brothers and they apparently did some checking because they all notified us later whether or not the account was to be opened or not, which they all were.

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. In other words, that had to do mostly with your financial standing rather than anything else, is that true?

A. I presume so although our financial standing was good at the time.

Q. Now, will you state what the general nature of your operations were after you started to produce materials?

A. We had one crushing and screening plant operating that was to produce crusher run base of two different types in which Basich was supposed to take the material from the bins. We had no trucking connected with that plant and then we had several small plants working toward the production of concrete aggregates consisting of screened rock and screened sand, that were to be deposited by us at the batch plant.

Q. The first plant, as I understand it that you installed, was the crushing plant, is that correct?

A. Screening and crushing.

Q. Yes. Screening and crushing. Now, if your contract with Basich Brothers Construction Company, Mr. Frazzini—I'm referring to Article XII. It contains the following provisions: "In the event Basich Brothers Construction Company plant is used, moving in and moving out expenses will be paid by Basich Brothers Construction Company." What plant were you referring to in this contract?

A. In this paragraph, do you mean?

Q. Yes.



(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

A. That was a large pioneer crushing and screening plant known as the Model V-48, owned by Basich Brothers.

Q. Had you seen that plant before you signed this contract?      A. No, I had not.

Q. Do you know where that plant was at the time you signed the contract?

A. Nick Basich told me it was in their yard.

Q. What yards?

A. At 800 South Fremont Avenue, Alhambra, California.

Q. Yes—you signed that contract at that place, did you not?      A. I did.

Q. And did you go out to look at this pioneer plant while it was there?      A. I did not.

Q. Did you ask to see it?      A. I did.

Q. And why didn't you see it.

A. Mr. Popovich told me to go on out in the yard and I could look at the plant and the other equipment and upon my tour of the yard I did not see the plant in there because there was a great deal of equipment that I had looked at and from time to time I reported back to the office to see how the contract was coming along.

Q. All right. Did you, when you came back to office, ask anybody to go out and show the plant to you?      A. I did not.

Q. Now, that plant was eventually installed in connection with your job, was it not?

A. It was.

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. And with reference to the time the contract was signed on February——

A. Just a moment—may I make a correction? No, I won't need to make that correction.

Q. With reference to the 7th day of February, 1945, when was that plant installed do you recall?

A. As I remember it, Basich Brothers started moving that plant in within a few days after the contract was signed and they started working towards its erection as it came in.

Q. Now, this plant was installed under your supervision, wasn't it? A. It was not.

Q. Under whose supervision?

A. That I can't say because we had nothing to do with the plant during the time it was being installed, but I, on the other hand, saw Mr. George Covick about and I believe it was under his supervision, and his foreman, Mr. Paul Albino.

Q. Paul Albino was hired by you wasn't he?

A. He was not.

Q. Didn't you tell Basich Brothers that you wanted Paul Albino to help install that plant because he was familiar with the installation of it?

A. I did not.

Q. All right. (Looking through the Deposition.) We'll call your attention to this statement:—(looking through Deposition still)—now you leased that plant from Basich Brothers, didn't you?

A. We did.

Q. And when did you make the lease for that plant?

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

A. The date? I don't know.

Q. With reference to the 7th day of February, 1945, was it before or after that that you leased the plant?

A. It was after.

Q. How long after?

A. Oh, in round figures, I would believe it to be—roughly—two or three full months.

Q. And what were the terms of the lease? Was it verbal or written?

A. It was originally a verbal agreement which I believe was later confirmed by a letter from Basich Brothers, setting a rental rate.

Q. Do you have that letter here, Mr. Frazzini?

A. I do not.

Q. Then you and Mr. McCall were at your office this morning. Did you make an investigation to see whether or not that letter was available?

A. We did not.

Q. When did you last see that letter?

A. I can't say that I have seen it since the time of the job, although I know one was written, because—

Q. Never mind about the reasons, just answer the question. You're only encumbering the record.

A. Very well, Mr. Monteleone.

Q. Can you give us the terms of that lease that you had with Basich Brothers in leasing this pioneer plant?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. On the original agreement with Mr. Basich, the plant was to be leased under a rental figure of 10c per cubic yard computed upon the amount of concrete poured, but before or shortly afterwards, Mr. Basich informed us that we would have to take his crew including Mr. Albino in order to get the plant.

Q. Didn't he tell you that you had to get the crew in order to install the plant?

A. He did not. He installed the plant.

Q. Now, under whose operation—whose supervision, was that plant operating?

A. At that period?

Q. During the operation while you were on the job.

A. In the early first few days of its operation, Mr. Basich operated, and then we took it over.

Q. And under whose supervision was it done then? A. After we took it over?

Q. Yes.

A. He forced us to take Mr. Paul Albino who was his man, as the plant foreman.

Q. I'll show you, reading from your deposition again. A. Very well.

Q. I'm commencing on page 7, reading from line 15 through no, it's line 25: "Q. Now, on the job which Duque and Frazzini had near those of the pits sites, who was in control or charge? That is the job of taking out the rock and the subsequent crushing and screening.

A. For our Company?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. I mean who was in charge under this contract which you had with Basich Brothers?

A. Well, I presume I would be construed as being in charge of it because I was on the job all the time, although we had foremen and one superintendent, but we received our orders as to the production requirements and type of grading and so forth—daily from Mr. Kovick of Basich Brothers.

Q. He was their engineer or superintendent?

A. He was the superintendent for Basich Brothers.

Q. Well, did he have control or charge of your plant, or did he simply give you orders of what size material and the amount of material and such that they wanted.

A. Well, he gave us the orders for the production of the different sizes and the amounts from time to time.

Q. And you adjusted your work according to those orders?

A. Yes.

Q. And he designated the size and the materials that you were to use?

A. Yes.

Q. Now, who was in charge of the employees who worked in the pits on this equipment which you stated Duque and Frazzini brought to the job, the crushing and screening plant and the motor?

A. Well, Basich Brothers—these employees were all on Basich Brothers payroll, although in most instances we had the right to hire and fire the employees. I think there was one outstanding case on

Plaintiff's Exhibit No. 24---(Continued)  
(Deposition of Carson Frazzini.)

the job that we had trouble with Basich in this manner. In the original contract there was a provision under which I rented the gravel and screening plant from Basich Brothers. After the plant was on the job and had been set up as a standby for Duque and Frazzini we were then told that to use it we had to hire their plant foreman whose name was Paul something—I can't think of it at the moment although I could get it—and one day when we had given him orders to shut that particular plant down and lay men off and he did not do so but rather he went to the Basich Brothers superintendent, Mr. Kovick, for his orders and he kept these men on the payroll against our will, but other than that one incident we were able to hire and fire the employees on the job.

Q. How about the directions to the employees and the orders to them?

A. Well, those were given by men that we hired and fired and were orders from us, that is Duque and myself.

Q. The orders and directions were given by your superintendent and foremen working for Duque and Frazzini?

A. No, they were not employees on the payroll of Duque and Frazzini they were all in the employ of Basich Brothers. It was a complicated situation, but I guess that would be correct, they were given by men whom we were able to hire and fire.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. You would say that all of the men on the job operating were subject to your control? and direction?

A. They were supposed to be, yes, although they were paid by Basich Brothers, yes.

Q. Did you so testify?           A. I did.

Q. And you are sure those statements are correct?           A. I believe them to be correct.

Q. So that the only incident you had where there was any question about Basich Brothers interfering was at the time you ordered the plant shut down and Kovick ordered the men to go back to work, is that true?

A. Only insofar as the employees are concerned.

Q. I'm talking about your employees.

A. As far as the employees are concerned, yes.

Q. Now, who hired the men on this crushing plant?           A. You mean the pioneer plant?

Q. That is right.

A. Basich Brothers Construction Company hired them.

Q. Well, when were they hired?

A. Early on the job they were hired by Basich and put to work erecting a plant for him. Apparently we knew nothing——

Q. I'm not talking about the—erecting the plant. I'm talking about the operation of the plant—under whose supervision was the pioneer plant being operated?           A. After we leased the plant?

Q. That is correct.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. Mr. Paul Albino, who in turn was under Mr. Duque's orders and mine as we were the general superintendents.

Q. So that Mr. Albino, in connection with the operation of the pioneer plant, was taking orders from you, wasn't he?

A. He was supposed to be, yes. He also took orders from Basich.

Q. Never mind, we'll get to that later on. You'll have plenty of time to go into the matter, or your attorney, Mr. McCall, may be able to go into the matter later on. Now, before the pioneer plant was installed, had you installed any other plant outside of the crushing plant?

A. We were working on the installation of an adjoining screening plant.

Q. And that carried on its operations right along?

A. No, it did not prove to be very successful.

Q. Now, did you have the sand plant erected?

A. We did.

Q. Was that before or after the pioneer plant?

A. That was in the process of being erected while the pioneer was being erected.

Q. And that was under your own supervision?

A. That was.

Q. Now, as the men were working in connection with your job from the time you first started your operation, as I understand it, you kept the time cards of the men, is that correct?



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. Do you mean Duque and Frazzini or myself personally?

Q. Duque and Frazzini. A. Yes.

Q. Did you have a man specifically authorized to do that?

A. During the major part of the job Mr. Duque and myself tried to check the time cards each day.

Q. And after the time card was prepared and checked, what did you do with the time card?

A. We kept them.

Q. Kept them where?

A. We kept them at our office.

Q. And what was the man's name who had charge of your office?

A. At that particular time Mr. Duque and myself were taking care of the office.

Q. Now, were those cards kept in the regular course of business?

A. What do you mean by that?

Q. In the regular course of your operations?

A. Yes.

Q. And did you keep a time card for the time that each man worked?

A. I could not say, for sure, but I believe Mr. Albino turned his own time card in and those of his employees, direct into Basich Brothers, although I cannot be sure on that.

Q. You're not going to swear to that, are you?

A. As a matter of fact I'm not because I simply do not remember.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Now, Mr. Basich—when I say Mr. Basich, I mean Basich Brothers Construction Company—had his own office did he not? A. They did.

Q. And that was about five miles away from your office, is that true?

A. Oh, about four, roughly.

Q. Now, did you list correctly, as far as you have been able to determine from your general supervision, the exact hours that every man worked in connection with your operation?

A. Personally, do you mean?

Q. I mean under your general supervision.

A. I believe we did although I wouldn't say for sure as I didn't make up any time sheets for Basich that I remember of.

Q. Now, in your opinion, were these men necessary in connection with your operation?

A. They were.

Q. And how were the wages of these men fixed?

A. The rates were set by—as I understand it—by Mr. Kovick of Basich Brothers Construction, with the local unions.

Q. As a matter of fact the rates were set by the Federal Government, isn't that true, in connection with the Basich Brothers Construction, in the local unions?

A. Only the minimum rates, I believe.

Q. Well, were you paying anything beyond what the unions called for?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. No, but I believe the union rate was in excess of the government rate although I have never checked that for sure, it usually is.

Q. Did you give the unions a copy of your contract with Basich Brothers Construction Company?

A. I did.

Q. And when did you give them a copy of that contract?

A. I would say roughly that it would be about between the 15th and 17th of June.

Q. Well, did you make arrangements with the unions prior to that time?

A. No, I—for what purpose?

Q. Well, did you discuss the matter of rates with the unions prior to that time?

A. I did not.

Q. Now, who took care of all of your equipment, I mean the equipment generally including the pioneer plant of Basich Brothers in connection with repairs?

A. Are you referring specifically to the pioneer plant?

Q. No, I'm referring to all plants. Do you want to draw any distinction?

A. Yes, I must, because they were not all maintained by us. The small crushing and screening plant that we brought in, the sanding plant, and another screening plant that we erected, were all maintained by us, but the pioneer plant was maintained by Basich Brothers, I should say most of the repairs were carried on by us.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Well, as a matter of fact, all of the repairs on all of your equipment was under your general supervision, was that not true?

A. On our own equipment?

Q. Yes.           A. Yes.

Q. Did Basich Brothers ever make any suggestions to how you should repair your equipment?

A. Not our own personal equipment.

Q. Was it not one of the provisions of the leasing of the pioneer plant that required that necessary repairs should be made by any particular man?

A. I do not remember that ever being discussed specifically.

Q. Did you have available anyone who is competent of operating the pioneer plant?

A. Yes, we did.

Q. At the time that Albino was foreman did you

A. We did.

Q. You knew that Mr. Albino understood the operation of that plant, didn't you?

A. Mr. Basich told us he did.

Q. Well, you found nothing to the contrary did you?

A. No, I would not say that we did other than that he would not obey our orders all the time.

Q. Now, all of this equipment operated under your direct supervision, is that not true, all of the equipment on the job?           A. No.

Q. I mean in connection with the job that Duqu and Frazzini had with Basich Brothers.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. I would more specifically say that all of our own equipment operated under our orders at all times.

Q. Well, I'm going to call your attention to this same Deposition on page 12, commencing with line 17: "Q. Now, who took care of your equipment which you had brought down for Duque and Frazzini on the job?"

A. I presume you mean by that, under whose direction or whose supervision it was under?

Q. Yes, under whose supervision and who gave it care and repair?

A. Well, the equipment worked directly under my supervision and Mr. Duque's and during the tenure of the job we had we had various mechanics on the job who repaired it, but directly under our supervision." Is that correct?

A. That is correct.

Q. Who hired these mechanics?

A. We did.

Q. And they were under your direct supervision, is that not true?

A. They were.

Q. Who arranged for the purchase of any parts of equipment or any tools that you required while you were on the job?

A. In most instances we arranged for it and in some instances Basich Brothers arranged for it.

Q. What instance did Basich Brothers arrange for it?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. There were a number of instances, but a particular among the major items they furnished us with, there was one item I remember offhand consisting of a 24" conveyor belt some 125' long, roughly valued at \$425.00.

Q. That was charged against you, was it not?

A. That I cannot—

Q. In other words, they happened to have the belt in their storeroom and arrangements were made to procure it from Basich Brothers, is that not true?

A. I believe not.

Q. You don't know as a matter of fact, do you?

A. I couldn't say absolutely but I believe it was shipped from some company in Los Angeles.

Q. Did you discuss the matter with Mr. Basich before it was shipped?

A. I don't remember whether I discussed it with Mr. Basich or not.

Q. Did you discuss the terms upon which it was to be acquired?      A. No, I did not.

Q. And did you make any request for that conveyor belt?      A. I did.

Q. And that was before it was shipped, is that correct?      A. That is correct.

Q. And who did you make that request of?

A. I believe Mr. Kovick knew—I don't remember specifically.

Q. Now, what other instances did you have in mind that you mentioned?

A. There were several other instances, but I

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

believe in the case of some teeth for a power shovel that we were operating, I believe that Basich purchased those.

Q. And then charged you with them, is that not true?

A. I do not ever remember being charged with them.

Q. You had no contract with Basich Brothers whereby he was to furnish you free of charge with those teeth, did you?      A. I did not.

Q. Now, while the pioneer was being operated by you—you speak of this man Albino. Can you tell me of any other man by name, whom Basich Brothers supplied to operate that pioneer plant?

A. I don't believe they ever even suggested anyone else. In fact that was a condition upon which we leased the plant is that he be put in charge of it.

Q. And you were to be charged a salary, weren't you?      A. I believe so.

Q. And all men who worked on that job were to be charged a salary for operating that plant under your lease agreement with Mr. Basich, isn't that true?      A. I believe so.

Q. And all those men who were working on the pioneer plant while you were operating at that time at that particular plant, were enumerated in your time card every night, isn't that true?

A. I do not know for sure but I do not believe that was correct.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. You don't know?           A. I do not know.

Q. Incidentally, what did you do by the way with the time cards after they were prepared by you or under your supervision?

A. Segregated them into boxes for time periods.

Q. And did you prepare a payroll from those time cards?           A. I did not do so personally.

Q. Who did?

A. I believe that if any were prepared that they would be by Mr. Duque who was preparing the payroll cards.

Q. I see. And when those payroll cards were prepared by Mr. Duque, what was done with those cards?

A. They were put into boxes and kept in our office.

Q. Were any of them given to Basich Brothers Construction Company?

A. Not to my knowledge.

Q. Do you know what became of those payroll cards?           A. I do.

Q. Where are they?

A. I gave them to Mr. John Bray of the Glen Falls Indemnity Company for checking and auditing.

Q. When did you give these payroll cards to Mr. Bray?

A. As near as I can remember, I would say some time last fall.

Q. What time last fall?



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. The exact month and day?

Q. Yes.           A. That I don't know.

Q. When did you first meet Mr. Bray with reference to the 7th day of February, 1945?

A. I met him after that date.

Q. How long after?

A. That I do not know but I would guess possibly two and a half months or longer.

Q. At that time where did you see him?

A. At our office in Tucson.

Q. And how long did he remain in Tucson, if you recall?

A. That I do not recall, but I believe he was possibly there one day or possibly two days.

Q. Now, did you show him the payroll cards at that time?

A. I do not remember if he wanted to look at them, but had he wanted to he would have had full access to them.

Q. You had a man in the office at that time, is that correct?

A. No, we had no one in the office at that time but ourselves.

Q. I see. Now, who kept those payroll cards?

A. Mr. Duque had a good deal more to do with them than I did although we both were trying to check the time to be sure that each employee had worked those hours each day.

Q. Now, did you have a record of all of the equipment you were renting at that time when Mr. Bray first called at the office?           A. Yes.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. And did you have a record of all purchases which you had made in connection with your operations in connection with this particular job?

A. I would say virtually all of them.

Q. And did you show those records to Mr. Bray?

A. We did.

Q. And did Mr. Bray make any comments about them?

A. None that I can remember.

Q. Did he take any notes down, do you know?

A. None that I can remember. I can't say, but I believe he did make notes, but I couldn't say what was in them.

Q. Would you state that the first occasion that Mr. Bray called at your office was about the 11th of April?

A. It could have been, yes.

Q. And do your records show, as you observe from your best knowledge, a correct situation of the amount of your payroll and the amount of rentals that had obligated yourself, or paid, or the amount of material you had bought in connection with your operation?

A. As far as the payrolls were concerned, I don't remember if we had, well—I do remember that he hadn't totaled them that we wouldn't have known what the total amount of payrolls which had been paid, although we had a record of the hours, the time cards there, and we had records of virtually all of the equipment that we had purchased, and Mr. Bray I do believe wanted a general outline of

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

our financial situation and standing on the job at that time and we gave that to him as close as we were able to do.

Q. Now, in your opinion, were the rentals that you were paying for this equipment the reasonable rental of the equipment that you were using?

A. I do not believe—are you referring to equipment that we were renting from Basich?

Q. I'm referring to various equipment that you were renting outside of Basich Brothers?

Mr. McCall: I object to that as calling for a conclusion. The witness does not have before him any statement of any charge against him by Basich Brothers.

Mr. Monteleone: Well, you know what the terms of your rentals were of your equipment before you rented them?

Witness Frazzini: A. Not in all instances.

Q. Well, were there any instances which you didn't know anything about?

A. If we were in doubt we would ask to be sure to see if they were within the O.P.A. rental rates, and if they were we would accept them.

Q. And did you ever have any of them that were not within the O.P.A. rental rates?

A. I do not know of any specifically.

Q. And was that equipment that you were using on your job either rented or which you owned and operated, or any material which you purchased, necessary in connection with your operation?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. All that we rented and all the material we bought was necessary.

Q. And were they all based upon a reasonable price insofar as you know?

A. As far as I know they were.

Q. Now, you knew your payroll was being paid directly by Basich Brothers, didn't you?

A. I did.

Q. You have a provision in your contract, have you not (looking through contract) referring to Article 21, Subdivision 3: "Duque and Frazzini to submit weekly payrolls by Monday night of each week for the previous week which closes on Saturday at midnight to Basich Brothers Construction Company. Basich Brothers Construction Company to pay labor, compensation, insurance, public liability, property damage, Arizona employment insurance, Federal Old Age, Excise Tax on Employers and any other insurance on labor and charge same to Duque and Frazzini, which amounts are to be deducted from amount earned." Are you familiar with that provision? A. I am.

Q. Did you submit those payrolls to Basich Brothers? A. I believe we did.

Q. Who did?

A. Early in the job I believe Mr. Johnson did.

Q. And who was Mr. Johnson?

A. He was our first and only timekeeper who was on the job a short time. Beyond that point, any that were submitted I believe were submitted by Mr. Duque.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. I see, and those payroll records were correctly prepared, were they not, under your general supervision?

A. They weren't under my personal supervision.

Q. I mean under your supervision from time to time.

A. If Mr. Duque signed them I presume he would have been.

Q. And they were all prepared in the ordinary course of your business, were they not?

A. I would think so.

Q. And they were paid by Basich Brothers?

A. They were.

Q. Did Basich Brothers ever pay you, either you or Duque, any money whatever in connection with the operation?

A. Not to my knowledge.

Q. Now the workmen's compensation—the men you had working for you, the actual premium, was paid by Basich Brothers, was it not?

A. I suppose so. I did not know anything about that.

Q. Now, when you started your operations, did you have sufficient money at that time to meet your payments?

A. Yes, we did.

Q. How much money did you have in the bank at that time?

Mr. McCall: I object—

Witness Frazzini: A. I couldn't say offhand without checking.

Mr. Monteleone: Q. And what bank did you carry your money in at that time?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. I believe the First National Bank of Tonopah, Nevada.

Q. I see. How much money did you have in the bank at that time?

A. I just got through telling you that I do not know, Mr. Monteleone.

Q. Now, when Mr. Bray visited your office on this first occasion, did you tell him that Basin Brothers was paying your payroll?

A. I don't remember if he asked us or not, and I do not remember of telling him so.

Q. You don't remember of telling him so?

A. I do not.

Q. Did you have, at that time, when Mr. Bray first came to the office, a record of the amount of your productions?

A. No, only an approximate amount, that was arrived at by counting some loads that are binned from day to day.

Q. In other words, you had records of the approximate amounts, is that correct?

A. I believe a general approximate amount.

Q. And did you give Mr. Bray that approximate amount?      A. I believe so.

Q. And at that time did your record show that you had sufficient money to meet the payroll and your rent on the appliances in connection with your operation?

A. I don't remember specifically that to be so, but I'm pretty sure they would have showed that yes.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. That was the situation, is that right?

A. I believe so.

Q. And did you present that to Mr. Bray at that time?

A. I don't believe so.

Q. You don't believe so? You wouldn't state whether or not you did, would you?

A. No, I wouldn't because I do not remember.

Q. But Mr. Bray at that time was particularly interested in finding out your financial condition, wasn't he?

A. Yes, he was.

Q. Now, what was the method adopted at the time you commenced your operation and removed your material after you had produced it. How was it done. Was it stock pile or was it dumped in trucks?

A. I presume you are referring to the first screening and crushing plant that we set up?

A. That is correct.

A. It was removed in trucks from our bin to a stock pile.

Q. Yes, and then what was done with it after it was removed from your bin to a stock pile?

A. Mr.—I should say Basich Brothers Construction Company removed that material from the stock pile to the field.

Q. Now, when you removed it from your bins to the stock pile was there any method that you had adopted in determining the quantity of material so stock piled?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. Yes, we kept a rough truck count each day of the number of loads dumped in the stock pile and approximately what measurement we thought each truck was carrying.

Q. And did you make a record of that?

A. I believe at that time I had a record of it.

Q. And did you give that record to Mr. Bay when he first called at your office?

A. No, I did not give him the records although I may have given him an approximation of these totals.

Q. And that was—your approximate totals were arrived at by including the truck loads as you have already indicated, is that correct?

A. That is correct.

Q. And some of the material was removed, dumped in trucks of Basich Brothers Construction Company directly from your bins, isn't that true?

A. Yes, that is true.

Q. And some stock piled, as I understand it, is that correct?

A. That is correct.

Q. Did you first begin to stock pile before you followed the method of dumping the material?

A. We did.

Q. And how long did that operation continue?

A. Oh, I would say that it possibly continued the better part of two weeks.

Q. What was the reason for that.

A. Basich Brothers were not prepared to receive the material in the field at that time.



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. I see. Now, up to the time that Mr. Bray first called at your plant at Tucson, could you give me an idea as to the average tonnage per day that you were producing from the time you first started your operation?

A. There were such—it would be impossible because in the first few weeks of our operation we were not too stringently regulated on the graduation of the materials and we were able to produce as high as I believe around 1100 truck yards a day in a few odd days, and a good many days over 900, but later on our production fell below that and down to, I guess, on some days as low as maybe 250 yards, or something like that.

Q. And did you present that to Mr. Bray when he came up to your place on the first occasion?

A. I did.

Q. Were you having difficulty in connection with your equipment itself?

A. Yes, we were.

Q. That was in the beginning, is that correct?

A. Yes we were having some right along. Virtually all of our equipment ran better in the beginning than later on.

Q. Now, can you fix the time when the pioneer plant was first installed?

A. No, not accurately, but it seems to me like Basich started installing the pioneer right in the very early part of March it may even have been around the first of March and that was continued right on through the whole month.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Now, you recall receiving a letter from Basich Brothers on the 5th day of April, 1945 in which they requested you to install equipment in order to make more production?

A. I believe we received a letter to that effect.

Q. Yes?

A. (Continuing) At least I know it was discussed by us.

Q. I'll refer to a letter dated April 5, 1945, which has been introduced in evidence in this matter, Mr. Frazzini, from Basich Brothers Construction Company to Duque and Frazzini of Tonopah, Nevada, carbon copy of which was sent to Duque and Frazzini at Tucson, Arizona, and Glens Falls Indemnity Company, Los Angeles, California, in which is stated: "Reference is made to our Contract Agreement, dated February 7, 1945, in which you agreed to commence crushing material with one plant on February 19, 1945. It was further agreed that you were to move in two plants, each capable of producing 800 cubic yards per day of suitable material. Your attention is directed to the fact that the plant did not commence work on February 19th; furthermore, to date you have not averaged 800 cubic yards of material per plant per day.

"Since we reserve the right to compel you to move in additional equipment to insure proper completion of your contract, we hereby demand that you move in additional and suitable equipment

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

order to produce the amount agreed upon in our contract." Do you recall that letter?

A. I believe I do.

Q. Now, at the time you received that letter, were you averaging 800 cubic yards of material at plant a day? A. I don't think so.

Q. Did you get any additional equipment in order to bring up that amount to the amount of material required? A. We did not.

Q. Did you discuss this matter with Mr. Bray, about the additional equipment being moved in, when he saw you on the first occasion?

A. I do not remember of discussing it with him although I probably did if we received the letter prior to that time.

Q. Now, did you see Mr. Bray, John Bray of Glens Falls Indemnity Company, again?

A. I did.

Q. And that was the early part of May, 1945?

A. It could very easily have been.

Q. Was he alone at that time?

A. If I remember right I believe he was in the company of a man by the name of Ballou.

Q. Do you know who he was?

A. Mr. Bray presented Mr. Ballou to me as being a crusher expert, that's on the production of crushed materials.

Q. And he was presented to you by Mr. Bray as Mr. Ballou, who had come or had been sent there. Did Mr. Bray tell you who had sent him there?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. He did not, he told me I believe that Mr. Ballou was living in Phoenix and I did not question him beyond that point.

Q. How long did Mr. Bray stay at your Tucson plant on that occasion? A. Several days.

Q. When you say "several days" how many days would you state?

A. Oh, I would say—two or three days.

Q. And during that time did he examine any of your records? A. Mr. Bray?

Q. Yes. A. I believe he did.

Q. And what records did you have in your office at that time which you recall Mr. Bray's examining?

A. He went over the amount of bills that were owed, beyond that I don't remember, but I believe that was one of the principal things that he was wondering, was how much money was owing by us.

Q. And did he go into the matter of the amount of production you had produced up to that time?

A. Yes, he did.

Q. And at that time did your record show that you had spent more money in connection with your bills than you had earned from your production?

A. I am positive that it did.

Q. Then did Mr. Bray take down any notes?

A. I'm certain he did.

Q. Did your records show all rentals that were due on the equipment?

A. As a matter of fact we had had very few billings for any rentals up to that date, so the

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

were very incomplete on that score although in my personal diary I had credited most of the delinquent rentals.

Q. By the way, you mention about your time records being kept in your files, do you have an office here now?      A. We do.

Q. Did you preserve those records?

A. We did.

Q. When did you last see—pardon me, Mr. McCall had made a request that we take a little recess now, so I think it's a good idea.

(A recess was then taken at 3:10 p.m.)

#### After Recess

Mr. Monteleone: When did you last see those records?

A. Do you refer to the time cards?

Q. That is right.      A. Last fall.

Q. What part, the last part?

A. I couldn't say. I don't remember what month it was.

Q. Was that the time you *have* them to Mr. Bray?      A. It was.

Q. And are they in Mr. Bray's office now?

A. As a matter of fact I know they are.

Q. Did you give Mr. Bray any other records other than your time cards?

A. I believe I gave him some copies of time sheets that we had.

Q. Was that after you removed your equipment from the job?      A. That was.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. When did you remove your equipment from that job?

A. We started loading it out I would say, about the 10th or 11th, well around the middle of June and I think it was all gone by the end of June.

Q. You removed all of your equipment from the job is that correct?

A. That is incorrect; we did not.

Q. What equipment did you leave there?

A. We left some—an electric motor, electric switches, belonging to Duque and Frazzini. We left some rented equipment, bins, and well, I don't remember what else specifically we left the gravel plant in their possession with the explicit understanding that they would return them.

Q. In other words, you were quitting the job at that time for good, were you not?

A. Well, Basich Brothers—

Q. Just answer the question. You were quitting the job for good at that time were you not?

A. We were.

Q. And who paid for the men and expenses in dismantling your plant and removing the same from the job when you quit?

A. Duque and Frazzini.

Q. Up to the time you moved your plant away, in your opinion as a contractor, were all those men whom your time cards show as being employees in connection with your operation, necessary in connection with the economical operation of your work?

A. They were.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. And were all the equipment that you used and all the supplies that you acquired, in your opinion as a contractor, necessary in connection with the economical operation of your work?

A. Are you referring also the pioneer plant of Basich Brothers?

Q. That is correct.           A. They were not.

Q. They were not? Why?

A. During the time Mr. Albino was operating the pioneer plant there was a large amount of extra parts, repairs at that site, presumably charged to us, but we did not feel that it was required. Also, Mr. Kovick instructed certain repairs to be made on the pioneer plant over our protest that we did not feel were required.

Q. We'll get to that—Now, will you tell me what repairs were made that you did not require?

A. The biggest one was the rows of crushers—part of the pioneer crushing plant was built up at nights by a welder from Tucson on Mr. Kovick's orders and over our protest.

Q. How was that protest made?

A. To Mr. Kovick who advised us what he was doing and we told him that we did not think it was necessary.

Q. Was that before the operations started on the pioneer plant?

A. No, that was after it had started.

Q. When was it?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. I could not give the exact date but I could say that probably it occurred in the latter part of May.

Q. What else?

A. That was the only large thing I can think of right now.

Q. All right. A. In regard to repair.

Q. But the pioneer plant itself was necessary in connection with your operations was it not?

A. It was.

Q. And the only objection you made was in connection with the repairs of a certain row of cashers, is that correct?

A. That was the only vocal protest that we made, although we had discussed the accumulation of materials around the plant but we did not know whether or not they were being charged to us.

Q. Well, as a matter of fact, isn't it true that before any material was sent to you that you ordered that or Mr. Duque ordered it?

A. Not to the pioneer plant.

Q. Well, aside from this one item, what other items were there that were installed in the pioneer plant that you claim was charged to you?

A. I do not know of anything actually charged to us, as we were never billed for it, but Basich—

Q. Oh, I see—during the entire time that you carried your operations from the very beginning to the end, did Basich Brothers or anyone connected



(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

with Basich Brothers Construction Company attempt to fire any of the men who were operating under your supervision?

A. Not that I can remember of.

Q. Now, you closed your plant down about the 19th of May, 1945?           A. What plant?

Q. Your operations?           A. We did not.

Q. Did you at any time suspend your operations from Saturday until Monday, gave instructions to suspend operations from Saturday to Monday?

A. We did on one plant.

Q. What plant was that?

A. That was the pioneer crushing plant.

Q. I see, and who gave the directions, and to whom?

A. The order was given by me to Mr. Paul Albino.

Q. I see. You had been giving Paul Albino orders prior to that time?           A. A few.

Q. Now, were you operating the other plant when you gave Paul Albino the order to close down the pioneer plant?

A. On that particular day I don't know if any other plants were running or not, although I could consult some of my notes which I have with me.

Q. Were they made up at that time, those notes?

A. These notes that I'm referring to were made daily.

Q. Did you keep a daily diary?           A. I did.

Q. Do you have that dairy here?

A. I do.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. When was that kept? A. Daily.

Q. Was it kept in the ordinary course of your business? A. It was.

Q. From the very beginning?

A. No. No, it was not.

Q. When did you start to keep your diary?

A. April 5th.

Q. And who suggested that you keep it?

A. It was my own.

Q. It was. Why did you start on April 5th rather than prior to that time?

A. Prior to that time we did not seem to have equipment in sufficient quantities on the job to require a record of that kind being kept, but that was the same kind of a record I had kept in previous years of equipment.

Q. Now, do you have to refer to the records to determine whether or not you had not operated at all on May 19, 1945? A. I would.

Q. Do you have any distinct recollection?

A. Yes, I do have a recollection that we were operating some that day.

Q. What were you operating on that day?

A. I remember distinctly that we were operating the pioneer crushing plant that day.

Q. And outside of the pioneer crushing plant, what else were you operating that day?

A. I can say our procedure was to operate all plants that would operate mechanically unless they were broken down.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. Was your crushing plant broken down then?

A. That I do not know.

Q. Do you know whether your crushing plant was working that day?

A. I just told you that I did not know.

Q. And you left the job then didn't you?

A. At what time?

Q. May 19, 1945.

A. Do you mean, left Tucson?

Q. No, let the site of the work, not Tucson, but the site where you were working.

A. Oh, yes, I went into town during that time.

Q. Where did you go to, then, this particular time? A. I went to my home.

Q. Did you give any instructions to anyone on that job?

A. I instructed Mr. Paul Albino to lay his crew off on the pioneer crushing plant until Monday morning.

Q. Did you give any more instructions to a Mr. Hampden, your foreman?

A. I do not recall. No, I do not remember whether I did not right now.

Q. And were you on the job at that time?

A. Yes.

Q. And did you tell Paul Albino you wanted his men laid off on that job? A. I did.

Q. What did you tell him?

A. I told him that we were taking the large shovel that was feeding the pioneer plant out to

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

prospect for suitable materials that would not prove to be of such waste as those were running through the plant, and therefore to shut that operation down for the balance of that week end until Monday morning.

Q. And when you gave Paul Albino those instructions, you went to Tucson as I understand it, is that right?      A. That is correct.

Q. And when did you return back to the job?

A. I came out that afternoon.

Q. I see. Now, who did you give instructions to use that shovel. What shovel did you use?

A. The power shovel.

Q. Who did you give that instruction to carry on the operations that you explained.

A. Mr. Duque gave those instructions to the operator.

Q. Did you give any instructions to this Mr. Hampden?

A. I believe that he too had instructions governing the use of the shovel for the day inasmuch as he was working the balance of the day and he was to overlook that operation.

Q. You say Mr. Duque gave the instructions. Did you give any instructions outside of Mr. Albino?

A. I may have given them to Mr. Hampden.

Q. Do you know whether you did?

A. No, I don't remember if I did or not, but I often gave him instructions.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. I'm not asking what you often did on this particular occasion. What did you do on that particular day after the pioneer plant was to be closed down?

A. I can't say for sure, but I believe I did.

Q. And then you left for Tucson, is that right?

A. That is right.

Q. And you knew at that time that Basich Brothers required material in connection with their main operation at the Davis-Monthaine Field, didn't you?      A. I did.

Q. And they told you they were short of material at that time didn't they?

A. I calculated that they possibly had enough to finish pouring that day.

Q. When did you make that calculation?

A. In the morning.

Q. Did you discuss that with anyone?

A. With Mr. Duque.

Q. Outside of Mr. Duque did you discuss that calculation with anyone connected with Basich Brothers?      A. I do not believe so.

Q. All right. Now, was Mr. Duque at the plant when it was closed down or was he down town?

A. He was.

Q. And do you know originally how long he remained there?      A. I do.

Q. How long did he?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. He left for town with me at the same time—somewhere between 9:30 and 10:00 o'clock in the morning and he went into Tucson with me.

Q. So that you and Mr. Duque left the site of the operation that morning didn't you?

A. We did.

Q. And you gave Mr. Albino instructions not to operate that plant, is that right?

A. I did.

Q. Then you received the telephone call later on, did you not?      A. I did.

Q. From whom did you receive that telephone call?      A. From Mr. Kovick.

Q. I see. Was Mr. Hampden on the job at that time? When you left?      A. Yes.

Q. Did you give him any instructions or Mr. Duque, your partner, give any instructions to Mr. Hampden?

A. I won't say exactly how he received his instructions, but I believe he was given some by both Mr. Duque and myself while we were together.

Q. What instructions did you or Mr. Duque give Mr. Hampden before you left for Tucson?

A. I believe we outlined his program for the balance of the day with work we wished prosecuted.

Q. What did you tell him in reference to the work?      A. I would guess—

Q. I don't want any guesses, I want you to state from your best recollection.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. From my best recollection I would say that he was instructed to have the shovel prospect for gravel and he was advised of the reason for the pioneer crusher being shut down, and no doubt if anything else was running he was instructed as to what to do with that operation.

Q. Who indicated to him where he was to operate that shovel that day?

A. I would say that Mr. Duque probably did that.

Q. Do you know whether he did?

A. I would say that he possibly did.

Q. Were you there at that time?

A. Yes, I was with him that morning.

Q. Well, how did it happen that Duque gave the instructions instead of you?

A. Mr. Duque and I were quite full of instructions and often issued them to any employees we desired.

Q. When you and Mr. Duque left the job, did you expect to return back that day?

A. Oh yes.

Q. When did you expect to return?

A. As soon as we had finished our lunch at 1:00 o'clock.

Q. You left at 9:00 o'clock?

A. Between 9:30 and 10:00 o'clock.

Q. Did you give Mr. Hampden any instructions where he was to move or store that over burden material which he was to remove with the shovel?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. We were not removing over burden material.

Q. What were you removing?

A. We were not removing anything. We were excavating trenches prospecting for suitable material.

Q. Did you and Mr. Duque indicate to Mr. Hampden where he was to start to prospect for material?      A. Yes.

Q. And where did you indicate to Mr. Hampden that he was to start to prospect for additional material?

A. A very slight distance up the road toward Tucson, from our pit, but on the Golab property, which was under lease to Basich Brothers.

Q. How far?

A. My guess in footage is that it was possibly from the edge of the other pits we were working in not over 300 feet.

Q. Did you give Mr. Hampden any instructions as to when he was to start that operation?

A. As I remember it, the shovel was in the process of being removed when we were talking to Mr. Hampden.

Q. Who was moving the shovel then?

A. Let's see—I can't give his name but he was the regular shovel operator for that machine.

Q. Did you give Mr. Hampden any instructions as to whether he was to immediately start that prospecting operation that morning?      A. Yes.



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. And then you left at 9:00 o'clock, is that right?     A. Between 9:30 and 10:00 o'clock.

Q. And did you tell Mr. Hampden how long he was to operate on that job?

A. Oh, in connection with those prospecting operations? I couldn't say definitely, but I would guess that we did give him definite instructions to operate all day and on Sunday. In fact, I recollect that he wanted to work through Sunday in order to open them up.

Q. Isn't it a fact that you told Mr. Hampden to lay off all the men from any operation until next Monday?     A. No, sir.

Q. You did not?     A. I did not.

Q. Then Mr. Kovick rang you up, did he not?

A. He did.

Q. And he told you that Basich Brothers were short of material?     A. He did.

Q. And he told you that the Government engineers were demanding that the work proceed without delay, didn't he?

A. I don't remember of him saying that.

Q. Did you ever see Mr. Woolums, the resident engineer of the Government, at your pit?

A. Yes.

Q. And did he ever make any statement to you that you were not producing sufficient material to carry on the operations on the main project?

A. He did.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Mr. McCall: To which I object, as irrelevant, and immaterial, as Mr. Woolums had no part in this contract between Basich Brothers and Duque and Frazzini.

Mr. Monteleone: Q. If you will read your contract on Article I, which provides as follows: "The Subcontractor shall furnish all materials, supplies and equipment, except as otherwise herein provided, and perform all labor required for the completion of the said work in accordance with all provisions of the original contract and plans referred to therein, all of which are hereby made a part of this agreement, and under the direction and to the satisfaction of the Principal's engineer or other authorized representative in charge of said work." Mr. Woolums was the Government engineer in charge of this project, wasn't he? A. He was.

Q. And when did he start to make comments to you that you weren't producing or prosecuting your work sufficiently?

Mr. McCall: We object to that as calling for a fact not in evidence.

Mr. Monteleone: Did he tell you that you were not producing sufficient material for the work to be expeditely prosecuted on the main project?

Witness Frazzini: A. He did not.

Q. Did he ever make any complaint to you?

A. He did.

Q. When did he first make any complaint to you?

A. One of the first days that our screening plant

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

that had been set up to pour concrete aggregates was running negligible Mr. Woolums came over in company with other engineers and made tests upon the material and indicated that it was improper aggregate and not clean enough to meet their specifications.

Q. When was that, would you say?

A. I would guess it was around—oh, sometime early in April.

Q. All right, then, did he many any other complaint later on?

A. Not to me.

Q. Did he make any complaint about your operation to anyone in your presence?

A. No, he did not.

Q. Do you know a Mr. Mitchell?

A. No, I do not.

Q. Was there any Government inspector at your job?

A. Yes, several of them.

Q. Did they ever make any complaint to you?

A. Yes, they did.

Q. And was that directly made?

A. Not directly but when the material varied from the required specifications they immediately went to see Basich or Mr. Kovick or sometimes they came to us to try to get it corrected.

Q. Now, what time of the day did Kovick ring you up?

A. That I couldn't say, but I would guess possibly between 10:00 and 11:00 o'clock.

Q. And where were you at that time?

A. At my home.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. And where was Mr. Duque?

A. As far as I know at his home.

Q. Now, as I understand it, you did not return to the job until that afternoon?

A. I believe that's correct.

Q. Did you see Mr. Hampden at the job when you returned?      A. I think so.

Q. Are you sure?

A. No, I'm not positive, but let's see, I would like to say that I'm almost certain I did see Mr. Koviak.

Q. You have no distinct recollection of seeing him?      A. No, I don't.

Q. Now, what did Mr. Koviak tell you over the phone when he phoned to you that morning?

A. He told me that they were short of material in the stock pile to complete or pour that day and that they would like to have us start up the plant again and produce materials and I told Mr. Koviak that the materials had been produced for the last few days were coming from such poor base material that it was impossible to go on with that grade of stuff and that we had decided to shut the plant down in order to prospect for some good gravel which we felt could be found by that method and that we proposed to start up again Monday morning.

Q. Let me ask you this: How long was it after you left the job before Mr. Koviak telephoned to you?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. In minutes I couldn't say, but I would guess possibly an hour.

Q. Or more?

A. It could have been very easily.

Q. Now, during that period of time, from the time you left the job until Mr. Kovick telephoned to you, did you make any investigation to determine whether or not this shovel and its operators were prospecting for additional materials?

A. No, it would not have been possible for us to do that, but that was Mr. Hampden's function, to see that that shovel worked.

Q. Well, do you know whether or not it had been working during that period of time?

A. I know positively, or knew positively later, that it had because of the work that I saw done.

Q. Did you talk to Mr. Hampden about it?

A. I think so.

Q. And you'll state positively that that shovel worked in prospecting for additional material from the time that you left the job when you ordered the plant to shut down until up to the time you heard from Mr. Kovick, is that what I understand your testimony to be?

A. No, you understand incorrectly. That work was done between the time that I left the job and returned to the job that afternoon.

Q. Oh. What work did you observe was done by the steam shovel between that time and the prospecting for additional material?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. I could see where he had moved the machine out of the main pits and traveled across to the deposits of gravel strata that had been picked out by Mr. Duque, and where he had dug in and exposed the gravel face.

Q. Where was the shovel at the time you came back with reference to the pits where this excavation work took place that you observed?

A. It was within the immediate point of the pits, I believe, that it was near some of the trenches, if I remember right.

Q. Near some of the trenches? A. Yes.

Q. It wasn't at the pioneer plant then?

A. I do not believe it was.

Q. All right. Now, when you got back, was that the only reason you ordered the pioneer plant that you have already testified to?

A. That was the only reason.

Q. Now, when you got back to the pioneer plant in the afternoon, was it operating?

A. I don't remember if it was or not, but I do not believe it was.

Q. Do you know whether it operated at all until the next Monday?

A. I don't believe it did, although I don't recollect.

Q. Now, that was the only time, as a matter of fact, that you and Basich Brothers or any representative of Basich Brothers, had any discussion about your method of operation, isn't that true?

A. I should say not.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. All right. I'll call your attention to your Deposition so that your memory may be refreshed.

Mr. McCall: May it be understood that we object to all of this Deposition, which as I understand does not pertain to this particular case. This Deposition which is being used by Counsel, which I have never had the opportunity of seeing and which Counsel has refused to let me see prior to using it.

Mr. Monteleone: Well, Mr. McCall, the Deposition is of this Witness, is sworn testimony. I just wanted to know—I just wanted to get the facts and I don't think that you objection to my getting the true facts and true statements from this witness?

Mr. McCall: I'm only trying to confine the questions to this particular suit and not to any other litigation.

Mr. Monteleone: All right. Are you concerned about my getting the true statement from this witness?

Mr. McCall: No, what we are after are the true facts, but since I have been refused access to the Deposition that's being used, I question the facts.

Mr. Monteleone: Well, the witness is the best one to question the facts. It is a signed Deposition by him that I'll show you right now, that you may examine if you desire.

(Counsel indicating Deposition.)

Mr. McCall: I just object to its being used. It's all immaterial.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Mr. Monteleone: You don't care to see it now?

Mr. McCall: You're using it, aren't you Mr. Monteleone? I'm not depriving you of its use.

Mr. Monteleone: I'll get to that (looking through Deposition). Do you recall, Mr. Frazzini, your prior testimony where I called your attention to part of your Deposition in which you stated that the only time you had any controversy with Basich Brothers was on this particular occasion, well, no I'll withdraw that (looking through Deposition). No, here we are. Reading from page 9: this is your answer to a question was this: "I think there was one outstanding case on the job that we had trouble with Basich with in this manner, that originally in the original contract there was a provision under which we rented the gravel plant belonging to Basich but after the plant was on the job and had been set up as a stand-by for Basich we were then told to use it, that we had to hire his plant foreman whose names was Paul something—I can't think of it at this moment, although I could get that—and one day when we had given him orders to shut that particular plant down and lay the men off he did not do so, but rather he went to Basich's Superintendent Kovick for his orders and kept those men on our pay-rolls against our will but other than that one incident we were able to hire and fire the employees on the job." Did you so testify?

A. I did.



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. Now, were you referring in this Deposition to this particular incident we are now discussing?

A. I was not.

Q. Well, what other time did Kovick give any orders to your men not to work?

A. I did not say that he ever gave any other orders to our men.

Q. Did he ever give any such orders that you know of?

A. Are you referring in substance to this situation whether we ever had any trouble with Basich as concerning labor or over any phase of the job, may I clarify that?

Q. I'm confining myself to the particular labor incident you had referred to in your Deposition when you stated that: "one day we had given orders to this man Paul to shut down the plant and lay the men off and he did not do so," I want to know what particular incident you are referring to in this Deposition.

A. In which Deposition, this one?

Q. In the Deposition that was given sometime ago that I previously called to your attention in the case pending in the District Court of Arizona.

A. Mr. Monteleone, I do not wish to appear argumentative, but that record speaks for itself and points out the incident described therein (indicating Deposition). Does that answer it?

Q. No, it doesn't. I want to know what particular incident you were referring to in this Deposition

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

that was given by you on December 31, 1946, when you referred to the fact that one day when you had given orders to shut down that particular plant and lay the men off Palu did not do so. What incident were you referring to then?

A. The one therein described where I ordered Mr. Albino to lay his crew off until Monday morning and in which he did not follow my orders but followed Mr. Kovick's orders.

Q. Well, that's the same incident that you're testifying to now, that I have been calling your attention to, which was on May 19, 1945.

A. I presume it was.

Q. Well, I'm not asking whether you presume or not, I'm asking whether or not it is a fact.

A. I assume it to be a fact because I didn't have the incident associated with any particular date, but if you say that's the date, I'll say that it is true.

Q. All right. Now, how many times did you see Mr. Bray from the Glens Falls Indemnity Company at the job while you were operating?

A. I would assume that you mean how many visits, on the different visits to Tucson, did I see him? Would that be correct?

Q. Yes.

A. I don't know, but I believe about three, it could have been four, but I think just three.

Q. Did you ever write any report to the Glens Falls Indemnity Company while you were operating?  
A. What kind of a report?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. I mean any kind of a report or letter.

A. I couldn't say whether I did or didn't because there are none that come to my mind. But, had they asked for any information I would have supplied it.

Q. But each time that Mr. Bray called at your office did you explain to him all of your reports, showing payrolls, tools, and purchase of equipment and the amount of production?

A. No, we did not. He would only ask for certain facts or records and we were glad to show him whatever we had on them.

Q. Well, are those records—did they refer to your payroll?

A. I believe that he, from visit to visit, would want to know approximately what total payment or payroll had been expended on the job in order to determine our standing.

Q. I see. And you always gave him reports of what records you had of your production, isn't that true?      A. I think so.

Q. Did you have any distinct recollection of the matter?      A. Not that I remember, no.

Q. Did you ever add to or bring in any additional equipment after the pioneer plant, in reference to your operation, before dismantling your plant and leaving the job?

A. You mean after Basich Brothers brought the pioneer in did we bring in additional equipment?

Q. Yes.

A. No, not to my knowledge, unless it was some local rented units.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Did you ever—in your opinion the local rented equipment was necessary in your operations?

A. Yes, it was.

Q. And the rental was, in your opinion, reasonable rental?

Mr. McCall: I object as calling for a conclusion because the rental has not been provided this witness, as charged by Basich.

Witness Frazzini: In some instances we did not even ask for a rental rate because we were familiar with all O.P.A. regulations and knew they could be confined with that rate at all times.

Mr. Monteleone: You knew that all the rents were confined within that limit, don't you?

A. I don't know because I have never been billed with a full list of rentals from Basich.

Q. But as far as your investigation is concerned, you know of nothing to the contrary, is that right?

A. That is right.

Q. Did you ever make any request from Basich Brothers for a statement?

A. I never remember of having made one.

Q. They never refused you one, either, did they?

A. They did not to my knowledge.

Q. Now, did you ever discuss, during your operation, the matter of renting a plant owned by P.D.O.C.? And when was that matter first discussed.

A. The exact date or even the approximate date I don't remember but the subject was brought up to us by Mr. Kovick.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. Did you ever discuss the matter with Mr. Bray while he was in there?

A. Yes, I did.

Q. And when was it discussed with Mr. Bray?

A. During one of his visits in fact I believe it was the one in which Mr. Baloo was present.

Q. That's the engineer? A. Yes.

Q. And did Mr. Baloo and Mr. Bray go over to see that plant?

A. I don't know if they did or not.

Q. Did you tell them where the plant was?

A. I don't remember of their asking about it at all, although I very easily could have.

Q. What was the nature of the discussion between you and Mr. Bray and Mr. Baloo with reference to this P.O.D.C. plant?

A. I wouldn't remember exactly but I believe we discussed the amount of rental on the plant and its availability and what it could produce in relation to our operation, and——

Q. And did you tell Mr. Bray and Mr. Baloo then that the plant was available?

A. I believe I did.

Q. And did you tell them that it could be used in connection with your operation?

A. I am sure that if I told them that it was available that that covered it, yes.

Q. Did you ever discuss the matter with any representative of the P.D.O.C.?

A. No, I did not.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. Do you know a Mr. Earle? A. Yes.

Q. And who is he?

A. I believe he is the vice-president of P.D.O.C. but if not he is the highest official in Arizona.

Q. Did you ever discuss the plant with Mr. Earle? A. I did not.

Q. Were you ever present when that matter was presented to Mr. Earle? A. I was not.

Q. And did you ever discuss the matter with Mr. Bray at any subsequent time? In the procuring of that plant?

A. That I cannot say, although I would think that I probably did.

Q. And did you ever discuss it with Mr. Basich?

A. I did.

Q. And on how many occasions?

A. Oh, I would think possibly three occasions.

Q. And were you present at any time when Mr. Basich and Mr. Bray and yourself were present in the matter of procuring the P.D.O.C. plant, when that matter was discussed? A. Yes.

Q. And how many different occasions?

A. Only one to my knowledge.

Q. And when was that?

A. That was on one of Mr. Bray's visits in which we sat around and discussed the plant.

Q. You and Mr. Bray?

A. No, between myself and Mr. Duque and Mr. Basich. I think Mr. Kovick was also present.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. And did Mr. Bray make any comment in connection with the matter?

A. Not that I recall.

Q. Did you at any time make any comment?

A. No, not in regard to a decision. He discussed the rental rates with us and asked us if they seemed fair and so forth and so on.

Q. What did you say?

A. Insofar as the rental rates were concerned we thought that it was quite high.

Q. Well, what did he say further?

A. Mr. Bray or myself?

Q. You or Mr. Bray.

A. Well, I don't remember of going into that with Mr. Bray.

Q. While Mr. Bray was there and Mr. Basich, did you state that Duque and Frazzini would make arrangements to rent a plant?      A. I did not.

Q. At any time?      A. I never did.

Q. You remember that the plant was moved in near your job, do you not?      A. I do.

Q. How far was that plant moved in from your particular operation?

A. Oh, my guess would be about 750 feet, something like that.

Q. Do you know when that plant was moved in?

A. Yes, roughly—it was moved in about the first of June and they were partially erected until it started operating.

Q. Do you know when it started its operations?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. It was either the 7th or 8th of June, I think.

Q. That was about the time that you were dismantling your plant, is that not true?

A. That's not correct. We did not start dismantling until after that operation had commenced.

Q. I see. Now, how much were you producing from—we'll say the middle of May until this P.D.O.C. plant started its operation about the 7, or 8th of June, 1945?

A. During that particular period we had had a breakdown and our production was quite low.

Q. Well, when you say quite low, what do you mean?

A. I mean that it was, well, below an average of 800 cubic yards a day, I believe.

Q. Do you recall receiving a copy of a letter—by the way, during this period of time while your production was very low, did you have any discussion with Mr. Woolums, the resident engineer?

A. No.

Q. Or any of the inspectors, the Government inspectors?

A. I often discussed various things with the inspectors.

Q. Do you recall receiving from Basich Brothers a copy of a letter which they had received from the Government engineer in charge, do you recall that?

A. I do.

Q. Now, in that letter do you recall this statement, and the letter has been introduced in evidence—



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Mr. McCall: As what Exhibit?

Mr. Monteleone: I don't recall, but it's one of the Exhibits. It's a copy of the letter from B. C. Woolums, Resident Engineer, to Basich Brothers Construction Company, dated June 7, 1945, and it's a copy of a letter which was enclosed in a letter from Basich Brothers Construction Company to Duque and Frazzini and the Glens Falls Indemnity Company, dated June 8, 1945, which said letter is an Exhibit in our case.

Mr. McCall: Well, was this letter sent to the Witness?

Mr. Monteleone: Yes, a copy was sent to this Witness. It was enclosed in copy, to Duque and Frazzini and the Glens Falls Indemnity Company, dated June 8, 1945, in which it was stated as follows: "That the Government is vitally interested in this reduction as evidenced by a letter which we received from the War Department, dated June 7, 1945, a copy of which is herewith enclosed," do you recall a copy of that letter from the Government being enclosed by Mr. Basich?

A. I think I do.

Q. Now, in that letter, Mr. Woolums to Basich Brothers, dated June 7, 1945, which states as follows: "This office has observed closely the production of gravel base course, mineral aggregate, and concrete material since these operations were begun. At the present time the heart of the material pit has been worked out and it now takes more effort and

## Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

more time to produce good material of which there is still an abundance at this particular location. As stated by this office in letter of February 19, 1945, this office is of the opinion a shovel should have been used in this pit. Due to the mixing of the materials which would be accomplished by the use of a shovel, a far better grade of material would be obtained in your base course. Your subcontractors, however, elected to use carry-alls. This has resulted in production of gravel base course which has alternated from fine to coarse, causing a certain amount of delay in mixing and handling of the material on the grade. The following figures are cited to direct attention to the uneven production of base course material: May 27th—475 cubic yards; May 28th—605 cubic yards; May 29—980 cubic yards; May 30th—610 cubic yards; May 31st—750 cubic yards; June 1st—0 cubic yards; June 2nd—no record; June 3rd—0 cubic yards; June 4th—0 cubic yards; and June 5th—400 cubic yards. At the present time there is practically no material on hand to lay the remaining plant mix on the job. In regard to your concrete work the following figures are cited: May 31st—mixer shut down 30 minutes due to badly graded material. This necessitated changing of the mix from a 3-inch maximum to a 1½-inch maximum to finish the concrete pour on this day; June 1st—badly graded aggregate again encountered; June 2nd—shut down at 11:00 A.M. due to no aggregate in stock pile; June 4th—changed back to 3-inch

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

maximum mix; June 6th—stopped pour at 2:30 P.M. due to no aggregate in stock pile. Your sand screening plant ran steadily from May 1 to May 15 and then shut down until June 1st; on June 1st it was started again and ran until 12:00 noon on June 2nd when it again broke down; started again June 6th at noon, and at the present time is being fed very slowly. Your stock pile consists of approximately 200 yards of sand." Now are those facts true as stated by Mr. Woolums in this letter?

A. I can't say without checking.

Q. Now, it was after the shut down of your plant, after the lack of sufficient material being produced by you that Basich brought or installed this P.D.O.C. plant, isn't that true?

A. That I couldn't say.

Q. Now, that operation of Basich Brothers P.D.O.C. plant did not in any manner interfere with your own operation?

A. It did not.

Q. Yes?

A. Only that it was taking away material that we were supposed to produce under our contract.

Q. Then you weren't producing the required material under your contract, were you?

A. No, we were not.

Q. Did you make any arrangement up to the time that Basich Brothers moved in this P.D.O.C. plant to add additional equipment to produce this material?

A. Not in the latter part of the job.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Did you make any arrangements for any other plant to do so?      A. We did not.

Q. And that was the reason you closed down your job, isn't it?      A. Yes, that is true.

Mr. Monteleone: That is all.

Mr. McCall: It is now 4:25. Why don't we have a short recess while I consult with my associate attorney. We might have some questions.

Mr. Goldwater: You have no objection to that, Mr. Monteleone?

Mr. Monteleone: You will have to consult this little lady (indicating reporter).

(At this point a recess was taken.)

#### After Recess

Mr. Monteleone: I, pardon men, I have just one or two more questions.   Q. Now, as I understand from your testimony, your payrolls while you were operating were prepared under your supervision. You kept records of it and then they were given to Basich Brothers Office to be actually paid, is that correct?

Witness Frazzini: A. I believe so. I didn't actually do that personally.

Q. But it was under your supervision?

A. I would say it was.

Q. In the ordinary course of your business?

A. Yes.

Q. And they were all correct entries made in your payroll, is that correct?

A. I presume so.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Mr. McCall: Just a second, what was that question?

(Question and Answer read by reporter.)

Mr. Monteleone: Q. Now, you know of no error having been made?

Mr. McCall: What are you talking about?

Mr. Monteleone: The payroll of all the men in connection with his operation.

Mr. Goldwater: You mean the sheet submitted by Duque and Frazzini?

Mr. Monteleone (nodding head): To Basich Brothers and that would include your payroll for the operation of your pioneer crusher plant. Isn't that true?

Witness Frazzini: Well, it has been brought up several times today and reiterated, and I am under the impression that those time cards and that payroll were directly turned into Basich Brothers by Mr. Paul Albino, although I'm not certain.

Q. And you made arrangements with Basich Brothers to rent that pioneer plant without any operators at 10c a cubic yard.

A. The rate is correct, but there was a condition of rental that we must take his operators.

Q. But you were on the—you were to pay for the operators, isn't that true?

A. That is correct.

Q. You can't state whether or not the payroll in connection with the operation of the pioneer

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

crusher was under your supervision—prepared by you or not?      A. I can't.

Q. The men that were used in operating the crusher were necessary to economically operate that pioneer crusher, isn't that true?

A. They were.

Q. Now, in your contract with Basich Brothers, have they required you to pay workmen's compensation and if not, Basich would pay it, is that correct? Did you yourself pay it?

A. We did not.

Q. That was paid by Basich Brothers?

A. I presume it was.

Q. And charged against you?

A. I don't know.

Q. Now, during your operations, you rented, in addition to the pioneer plant certain other equipment from Basich Brothers, didn't you?

A. What are you thinking of specifically?

A. Well, did you rent any bull dozers?

A. Yes, occasionally we rented one.

Q. Did you ever rent a tractor from him?

A. I believe so.

Q. Did you ever rent any trucks, semi-trucks from him?

A. I believe we rented trucks that were under lease to him at certain periods, yes.

Q. Did you ever rent any welding trucks from him?      A. Not to my knowledge.

Q. Did you ever rent a Northwestern shovel from him?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. I don't believe so. I'm almost positive that we did not.

Q. You didn't rent a shovel during the month of March from him?

A. I'm positive that we did not unless it would be for just a few hours, two hours or so.

Q. That's what I mean.

A. Two hours or four hours, something like that, yes.

Q. Did you rent a truck crane from him during the month of May?           A. I believe we did, yes.

Q. And were they fully operated?

A. Virtually anything we rented from Basich Brothers was fully operated.

Q. And you discussed the terms with Mr. Basich at the time you rented them?

A. No, I don't believe I did, but I assumed that they would be within the O.P.A. price.

Q. And was this equipment necessary in connection with the economic operation was it not?

A. Yes.

Q. Do you recall renting a Simon screen from Mr. Basich during the month of March?

A. That screen—let's see. That screen was brought in by Basich Brothers from Los Angeles although right now I don't recall any agreement to pay rental on it. I assumed it was part of the pioneer plant that he was to furnish.

Q. Did you discuss the matter with him at the time?           A. I believe we did.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. How about a conveyor—did you rent one from him?

A. I'm hazy on that for the reason Mr. Basich brought a number of extra conveyors along with the pioneer plant into Tucson which I assumed were to be part of the plant and if rental was charged on those, I'm not acquainted with it.

Q. How about a generator. Did you rent a generator from him?

A. Yes, he brought in two generators from Los Angeles and now there is another thing I don't know if we were supposed to pay a separate rental on those or not.

Q. They were necessary in connection with your operation?

A. They were, yes.

Q. How about a bunker from him?

A. Well, there again I could not say. The only bunker I remember of renting were directly from P.D.O.C. although Basich sent extra bunkers in with the pioneer crushing plant.

Q. They were used by you?

A. Yes, they were used in connection with our operation.

Q. And they were necessary?

A. They were, yes.

Q. Now, did you rent certain equipment through Basich Brothers that were owned by J. J. North and son?

A. Yes, some trucks.

Q. Dump trucks?

A. That is correct.



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. And they were used in your operation, were they not?      A. They were.

Q. You never paid J. J. North for that did you?

A. I'm under the impression that we paid Mr. North for some trucking at the very end of the job, but I can't remember specifically what amount it was for, for it seems to me like most of the rentals, if we had any from North, would have been charged to Basich.

Q. Did you ask Basich to get you certain trucks from North?      A. Yes, we did.

Q. You told Basich that you needed those trucks in connection with your operation didn't you?

A. We didn't discuss that, but we asked him for trucks from North, yes.

Q. And you told Basich that you would pay for the renting of them, didn't you?

A. No, we didn't tell him we'd pay him, but we assumed that we would.

Q. In other words, it was in connection with your own operation that these trucks were used?

A. That is right.

Q. And as far as the rental is concerned, they were within the O.P.A. regulations, were they not?

A. Well, we have never been billed for them.

Q. But as far as you know—did you discuss what the terms of those rentals were?

A. No, we had heard indirectly that those trucks were being rented at the full O.P.A. scale and we assumed that any payment would be that way.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

asked that question and any statement that they assumed, that Basich Brothers assumed any obligations outside of what they were required to assume under their contract with Duque and Frazzini, would be a conclusion on the part of this Witness. For that reason, I object to the question.

Witness Frazzini: That particular agreement was made with Mr. Nick Basich in Los Angeles at the time the contract negotiations were on, and the understanding was, that as soon as those men arrived on the job to erect the plants he would pay their wages.

Q. What men do you have reference to when you say "as they would arrive on the job."

A. Those were my men, the men that we brought in from California or Nevada to work on that project.

Q. And when did they arrive on the job?

A. I believe about the same time we did. We probably started work about the 11th of February.

Q. And was Mr. George Kovick superintendent for the pioneer on the job at that time?

A. He was not.

Q. When did he come on the job?

A. He came several days later, I think, from Los Angeles where I had seen him during the contract negotiations.

Q. Then after you went on the job, on or about February 11, 1945, did you carry any of the men

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

on your own payroll, or furnish materials or supplies in connection with the sub-contract work?

A. We did not.

Q. Did you carry any insurance compensation, public liability, or other insurances on the men who were working in the pit on the sub-contract work?

A. We did not.

Q. Well, who did carry the insurance?

Mr. Monteleone: If he knows.

Witness Frazzini: I do not know.

Mr. Monteleone: Now, wait a minute. I object to the question, if the witness does not know——

Witness Frazzini: I do not know, but I assume——

Mr. Monteleone: I object to what the Witness assumes. I know, Mr. Frazzini, you are anxious to get as much as you can into the record, and that you are anxious to build up the defense in this case——

Mr. Frazzini: Please contain yourself, Mr. Monteleone.

Mr. Monteleone: You know very well that what you may assume is not competent in testimony. You have had enough experience in litigation to know that.

Witness Frazzini: I have not, and I did not know that, frankly.

Mr. Monteleone: Well, then you didn't let me complete my objection——

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Mr. Goldwater: Well, can't the Witness answer the question, subject to your objection and let the Court decide the objection?

Mr. Monteleone: The Witness can go ahead and answer.

Mr. McCall: Q. Mr. Monteleone, as attorney for the Defendants in this case, which is the Glens Falls Indemnity Company, I'll ask the Witness and his counsel to give you all the time in the world you want to object to any question I have asked.

Mr. Monteleone: I want to put in an objection. The witness can go on and answer it with the understanding that I'm reserving the right to make a motion to strike out any of his answers at the proper time.

Mr. McCall: Q. Then you did not carry any of the men on the sub-contract working on your payroll from the time the work started until the end, is that right?

Witness Frazzini: That is right.

Q. And did you report to the Government in connection with any withholding tax reports?

A. We did not.

Q. Now, did you request anybody, individuals, or corporations to make these payments in your behalf? A. We did not.

Q. Did you—did anyone voluntarily state to you that he would pay all of your labor and equipment charges and insurance?

A. Mr. Nick Basich told me at the Los Angeles

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

office when we were making up this contract that he would carry the payrolls and as far as accident insurance; I do not remember his mentioning any materials at that time.

Q. Well, we'll go back to the 11th day of February, 1945, when you went on the job and started to install equipment, Is that what you started doing, at that time?           A. Yes.

Q. Was there anything said that day between you and Mr. Basich or you and Mr. Kovick with reference to who was going to pay the bills for labor?

A. No, Mr. Basich wasn't present at that time and I don't believe Mr. Kovick was present at that time, but I never had any subsequent discussions after talking with Mr. Basich in Los Angeles about it. He just automatically began paying them.

Q. Then did you start producing material on or before the 19th day of February, 1945?

A. We did not.

Q. And what date did you start to produce material, if you recall.

A. I don't remember the exact date, but I believe it was about the 25th of February.

Q. Then after you started producing material, when did you first start to stock pile the material mined?           A. From the first day.

Q. And who selected the place where you would stock pile?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. Well, Mr. Kovick selected that spot. I had selected one down at the large pit near our plant and he selected one up on the barge toward his plant, and said that he wanted the stock pile there, which we did not want to do because we could stock pile at the site chosen by us, we figured with one truck, whereas the site chosen by him would require two to three trucks. Eventually I acceded to his demand in order not to break with him.

Q. Then after the date that Mr. Kovick selected the place where you should stock pile, did he give any directions to you and your men after that date and prior to May 19th, mentioned here today?

A. Well, he often told us that he thought we should dig in a certain place in the pit to obtain better material or that we should erect a certain part of a plant a certain way, but that would be all.

Q. Now, under the examination by the attorney for the plaintiff you stated in effect that you wanted to shut down or gave orders to shut down on May 19th so that you could use the shovel or other equipment to explore for better material? A. Yes.

Q. And did you find the better material?

A. Yes, we did.

Q. And how far was that from where you were operating at the time you requested the shut down?

A. I would guess from the limits of one of the pits we were working in, that it would be 250 or 300 feet away, possibly.

Q. And did you bring that to the attention of Mr. Kovick?

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

A. No, I believe Mr. Kovick came over while we were doing the work, trying to locate it, and saw us doing it. But we went over there as we understood the whole ranch was under lease for that purpose.

Q. Well, did you stay over then even after you found this better material?      A. No.

Q. Well, then if you did not stay over there to produce material, why didn't you?

Mr. Monteleone: I object as to what his reasons were—his conclusion. You may go ahead and answer.

Mr. McCall: Well, strike the question then, because it's not as definite as it could be. I'll ask you if anyone told you not to move over there to produce material.

Witness Frazzini: Yes.

Q. You say someone did tell you not to move over there. Who was it?

A. Mr. Kovick and Mr. Woolums.

Q. And what time was this with reference to May 19, 1945, when they countermanded your order?

Mr. Monteleone: Just a moment, there is no testimony that there was any order countermanded.

Witness Frazzini: You're well aware that there was, Mr. Monteleone.

Mr. Monteleone: I'm not arguing with you, Mr. Frazzini, I'm merely putting in an objection.

Mr. McCall: Go ahead with the answer.

Mr. Frazzini: What was that question again?

(Question read by reporter.)

## Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Witness Frazzini: I believe it was afterwards.

Q. And how long after May 19th?

A. It was either—I don't recall if it was that same day or the next day. It could have been that it was within several days of that time because we were prepared—as soon as we discovered that strata of gravel, to go in there and feed it into the plant, when they told us not to.

Q. When you say "they," who do you refer to?

A. To Mr. Kovick and Mr. Woolums.

Q. Then sometime after June 1. You testified here this morning that you wrote a letter to the plaintiff here stating that if he insisted on producing material that you were going to leave the job or words to that effect? What day did you leave that pit?

A. What pit are you referring to?

A. Where the gravel or aggregates were produced.

A. I believe we suspended operations, as near as I can remember, on the 8th and we were busy for a week or ten days after the 8th or after the 9th or 10th, somewhere in there, we were busy let's say a week, dismantling those plants.

Q. What plants do you refer to?

A. I am referring to the crushing and screening plant, an A.B.C. plant and a sand plant that we had erected and a portion of a scaling plant that had been incorporated into the Basich Brothers pioneer plant. We erected as much of that as they would let us.



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. And what other machinery was in operation at that time producing material?

A. During the time we were dismantling these plants?

Q. Just before you started to disassemble your plants.

A. Do you refer to right after June 9, when we wrote Mr. Basich of Basich Brothers a letter?

Q. That is right, yes.

A. At that time they had brought in a plant, another pioneer plant. Incidentally, belonging to the P.D.O.C. Construction Company and had erected and began production with that in a pit about—oh, just roughly 750 feet from your crushing and screening plant and that plant that I'm referring to is the one in which we were referring to that we wrote Mr. Basich the letter saying that he was producing materials that were to be produced under our contract and that unless he suspended operations that we would do so.

Q. Did he ask you too, for your permission to put in this P.D.O.C. plant?           A. He did not.

Q. And did you know he was going to put it in before he did put it in?

A. We observed him installing the plant, if that's what you mean?

Q. And was the material that he started producing with that plant the same material that was mentioned in your subcontract?

A. Yes, it was.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Then after you wrote him the letter, did he cease operating the P.D.O.C. plant?

A. No, he did not.

Q. Then at the pioneer plant—was the pioneer plant and the P.D.O.C. plant in operation when you wrote the letter?

A. I—yes, I believe they both were, as far as I can remember.

Q. And did both of those plants continue to operate?      A. Yes, they did.

Q. And when you left the pit was there any interruption that you know of, in the production of the material?

A. Insofar as those two plants were concerned?

Q. Yes.

A. No, I don't believe that there was. They were both producing, if that's what you mean.

Q. And did Mr. Albino stay on operating at the pioneer plant?      A. Yes, he did.

Q. Did any of the employees or the employees operating the pioneer plant stop work when you left the pit that you know of?

A. Not that I know of. I believe they all stayed on.

Mr. Monteleone: I move that that be stricken out, what he believes, if he doesn't know of his own knowledge.

Mr. McCall: Q. Tell me, Mr. Frazzini, what was Mr. Kovick doing in the pit from the time he

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

first came on there about February 11th, and thereafter until you left them?

Witness Frazzini: A. Well, he had a number of different things that he did. Early in the month of February from the 11th on, until the time we actually began production he didn't have much work going at the time in the Field and he was quite often at the pit and he helped us in every way possible, I guess, to get our plant running and then shortly after we arrived in Tucson the pioneer crushing plant was brought in by Basich and he was very often around there instructing Mr. Albino as to how to set it up and he was checking materials that is to see where the best materials might be obtained in the pit and I think that would pretty well take in his activities.

Q. Did the foreman of Basich Brothers Construction Company ever send you a bill covering the compensations and other insurances on the job?

A. No, not to my knowledge.

Q. Did Basich Brothers Construction Company, the plaintiff here, ever give you a bill covering the labor that they charged to you on the job?

A. I think not.

Q. I'll hand you what purports to be a bill of particulars furnished to the Defendant the Glens Falls Indemnity Company by the Plaintiff, and ask you if the Plaintiff here ever gave you a copy of that bill of particulars?

(Hands to witness.)

A. No, they did not.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Then on the equipment which has been referred to here as being rented for you by Basich Brothers Construction Company. Did you have a written contract with them for the equipment that you asked them to rent?

A. Do you mean with Basich Brothers?

Q. Yes. A. No, we did not.

Q. Did you have a contract with anybody for the equipment that Basich Brothers Construction Company furnished on the job?

A. Off hand I do not recall any such agreement.

Q. Go ahead.

A. (Continuing): Although it would have been possible.

Mr. Monteleone: Mr. Frazzini, kindly don't go into a matter that might be possible, just encumbers the record. It's not material in this matter. I have no objection to your going into detail but I know you're anxious to cover as much ground as you can, but you have answered the question all right.

Witness Frazzini: As you have said several times, Mr. Monteleone.

Mr. McCall: Q. Then, I'll ask you what was the procedure when you rented equipment from Basich Brothers or equipment belonging to Basich Brothers was used on the subcontract jobs? I'm referring to the pit.

Mr. Monteleone: Will you read that question back, please?

(Question read by reporter.)

## Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Mr. Monteleone: Is that a general question or a specific question as to the particular items, Mr. McCall?

Mr. McCall: Just a general question as to all the equipment which Basich Brothers has charged against Duque and Frazzini, which of course he has no knowledge of at this time.

Mr. Monteleone: I'm going to object to the question as being too general. But let the witness go on ahead and answer it.

Witness Frazzini: A. There would be several different conditions that prevailed for instance on certain equipment we rented from Basich that was fully furnished, the procedure there would be that they brought their time cards over to be signed and that was rented on what is known as a fully operated basis; and then on the pioneer crushing plant, which was the biggest item we had rented, we had no written contract on it except a letter that Basich Brothers sent us stating the rental terms and that was just on a basis that would be determined by eventual yardage or tonnage and then we had equipment rented from—for instance, from P.D.O.C. construction company, some which was on a bare rental basis that was procured for us by Basich and then on fully furnished basis, that I would classify as having been procured for us by Basich because they were using the equipment too and those are pretty generally the conditions that we used them under.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. Well, did you also give to Basich Brothers some memorandum in writing to show that you received equipment which you ordered?

A. No, we did not. The only thing in writing on that would be that on Basich Brothers units that were fully operated. They usually brought their time cards over for signature and that's also true with P.D.O.C. equipment; but anything rented on a bare rental basis without the operator on a monthly basis nothing was ever signed on that to my knowledge.

Q. But on all equipment fully rented, operated, you signed a card or statement to the effect that you received it, is that right?

A. Well, I believe we signed their daily time card on those units, that's for Basich and P.D.O.C.

Q. Now, we refer to schedule 39, the bill of particulars, which refers to item 11 in the subcontract, just a moment, it's not, item 11 in the subcontract, it's article 23, item 11 in the subcontract, on page 6 which says: "measurement to be computed on truck water level." Do you remember that item?

A. I remember one item of crusher run that was to be computed on that basis but just off hand I don't recall the technical names unless you refresh my memory on it.

Q. Well, I'll show you the schedule 39 in this bill of particulars, copy of which counsel has before him, and ask you if you had any contract or agreement with Basich Brothers after the signing of your

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

subcontract to calculate that material otherwise than is stated in the subcontract?

A. No, not to my knowledge.

Q. You will note the subcontract calls for 40c a cubic yard and the material has been added up in square yards and then reduced to cubic yards. Do you know on what basis, for what reason that was done?

A. No, I don't.

Q. Then the auditor who went into the books, found, according to the record, a card of John Brown on March 17, 1945, showing 8½ hours' overtime, all the same day and the payroll sheet shows that he worked 11 hours and he was paid for 11 hours. Do you know why this discrepancy came in there?

A. No, I don't.

Q. If there is any discrepancy in the time mentioned on the cards signed by the employees and the amount that they were paid, do you know why this came about or how it could have come about?

A. No, I don't.

Q. There was something said here about Basich Brothers taking a power plant off a crusher and my notes are not clear on that. Could you tell us if the plaintiff here took a power plant off of a crusher without your consent?

A. Yes, I presume you are referring to the P.D.O.C. power plant which was rented for us by Basich Brothers and which they took away from our crushing and screening plant, known as the A.B.C. plant, without our permission during one of our breakdowns, and took that over to power the

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. After Basich Brothers Construction Company installed the P.D.O.C. plant you mentioned a few moments ago and started producing material covered by your subcontract, did you have any discussion with either Kovick the general superintendent, or with Basich?

A. You mean—I do not remember of any discussion pertaining to that plant.

Q. Then the only thing you did was to write them a letter telling them that you were pulling off if they did not stop producing?

A. Yes, that occurred, and that plant was mentioned in that letter.

Q. Now, you stated a while ago that you gave certain time cards to Mr. Bray. Could you tell us how many time cards you turned over to Mr. Bray?

A. Not in the actual number. I turned over every time card to him that we had in connection with that job.

Q. And did they represent all the employees that you had ever hired on the job?

A. Insofar as I know they did, yes.

Q. In other words, each employee had a time card for each day's work, is that right?

A. That is correct and they should have been complete, although a few may have been lost.

Q. And the foreman or someone else signed the time cards?

A. I couldn't say that they did or didn't. In fact, I know they were not always signed, but Mr. Duque



Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

and myself tried to make available enough time each day to go through the time cards for the previous day and be sure that no employee had turned in more hours than he actually worked.

Q. Mr. Frazzini, what became of the information that was contained on those time cards?

A. Well, it's still on the time cards.

Q. What was it used for, if anything.

A. Well, it was made to make up a weekly payroll for the employees for Basich Brothers.

Q. And was that weekly payroll made up by one of your employees or an employee of Basich Brothers?

A. I think Mr. Duque made it up most of the time.

Q. Was it signed by anyone?

A. I don't know. I presume Mr. Duque signed them.

Q. You don't know?                   A. No, I don't.

Q. You didn't see him take off any information from the time cards and transfer it to the weekly payroll sheet?

A. Yes, I often did see him do that.

Q. And then you would say that any weekly payroll sheet taken from the time cards would be either signed by your Mr. Duque or one of your foremen.

A. Well, no foreman working for us ever made that payroll sheet up and it was mostly made up by Mr. Duque and I don't ever remember of signing one

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

and I don't know actually that Mr. Duque signed one, but I was presuming that he did.

Q. Mr. Goldwater is Mr. Frazzini's counsel and he may wish to ask a few questions.

Mr. Monteleone: Let the record show that Mr. Goldwater is questioning Mr. Duque.

Witness Frazzini: Mr. Frazzini.

Mr. Monteleone: Yes, Frazzini.

(At this point Mr. Goldwater questioned the Witness in behalf of Mr. McCall since he was not present in an official capacity.)

Q. (By Mr. Goldwater): Now referring to the stock piles, Mr. Frazzini. According to the contract, the stock piles were to be re-handled by the party of the first part in the contract with Basich Brothers Construction Company?

Witness Frazzini: A. They were handled by Basich Brothers, the re-handling of the stock piles in any way.

Q. Did the re-handling of that stock pile in any way change the quantity and the quality of the aggregate or other materials produced by reason of that handling? A. Yes, it did.

Mr. Monteleone: I object to the question for the reason that Mr. Duque and Mr. Frazzini have not appeared in this action and the matter is a matter of incompetency, irrelevancy, and not material.

Mr. Goldwater: I think I would rather have Mr. McCall ask the questions because I think that it is

## Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

proper inasmuch as he is representing the Glens Falls Indemnity Company and Mr. Frazzini would not be under the jurisdiction of the court. It's just as well that the record show Mr. McCall as asking the questions.

Mr. Monteleone: Very well, that may be understood that the questions will be asked by Mr. McCall and I will not take cognizance of the fact that you actually asked the question.

Mr. Goldwater: You were referring to the stock piles. Now these stock piles suffered both in quantity and quality by reason of Basich's re-handling of these stock piles?

Witness Frazzini: In pushing these stock piles within reach of a loading machine to put them into bunkers for blending, a large—approximately 22 ton caterpillar bulldozer made continual trips up and down these stock piles grinding this formerly clean rock into finer particles, thereby making it dirty. Also, the operator mixed up stock piles which was sometimes contemplated at our expense and in fact in connection with one of these large piles containing, by our estimate, 3,000 cubic yards, which this bull dozer was walking on and had packed clear down and pushed dirt up with it, Mr. Kovick informed us that the entire stock pile had been condemned, although that was an error on his part. So on the whole it was very harmful to our aggregates.

Q. By reason of the re-handling of the stock piles you had to re-run material did you?

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. That is correct.

Q. Can you mention the number of occasions on which this occurred?

A. It didn't occur very many times. One of the worst harms I believe it did was that it continually brought to the attention of the U. S. Engineers that the material was not clean by reason of this caterpillar walking on them.

Q. That would slow down your production to some extent, would it not?      A. Yes, it did.

Q. When you first started producing did Basich Brothers take the material from the bins of gravel embankment material?

A. No, they did not.

Q. You started to stock pile almost immediately?

A. We did, as soon as we started production.

Q. At the time you received the letter listing the lack of materials on the job as certified to by the engineer, did you make a check to determine whether there was sufficient material for Basich Brothers?

Mr. Monteleone: Are you referring to the letter of Mr. Woolums, dated June 7, 1945?

Mr. Goldwater: Was there a previous letter?

Mr. Frazzini: No.

Mr. Monteleone: The answer is no?

Witness Frazzini: No, that's not the answer. There was not a previous letter to my knowledge.

Mr. Goldwater: There was no previous letter?

A. Not to my knowledge.

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. Was there any periodic check taken by you in regard to the amount of material produced?

A. We kept a daily truck check in order to determine approximately how much material we were producing each day.

Q. But there wasn't any weekly check up between you and Basich Brothers of all the plants or any one plant?

A. No, there was not.

Mr. Goldwater: That is all.

Mr. McCall: Wait just a second, I want to ask—I'm showing the witness what purports to be schedule No. 37, if you please, Mr. Monteleone, and I'll call your attention to the item on there of \$360.50 and ask if you know what that is for?

A. Apparently that's the return freight on a shovel that we had previously rented from the Phoenix-Tempe Stone Company on its return trip from Tucson to Phoenix by Basich Brothers.

Q. Did you agree to pay that to anyone?

A. We did not. In fact we made a specific agreement with Mr. Van Dorne, the president of the Phoenix-Tempe Stone Company and with Mr. Kojick of Basich Brothers, that they, Basich Brothers, would pay that rental before we released the shovel in lieu of which we were going to return the shovel directly to Phoenix to the Tempe Stone Company on or about the 10, 11 or 12th of June.

Q. Then, as I understand it, when you started to return the shovel to the Tempe Stone Company at Phoenix, Basich Brothers Construction Company

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

agreed to pay the freight or take it back if you turned it over to them?

A. That's the exact conditions upon which we released the shovel to Basich Brothers.

Mr. McCall: That is all.

### Redirect Examination

By Mr. Monteleone:

Q. Now, had that been returned by you to the Tempe Stone, you would have had to pay the freight, wouldn't you?

Witness Frazzini: A. That is correct.

Q. Now, you specified that when the contract was signed by you and Basich Brothers Construction Company, that they would agree to pay your payroll and insurance, and accordingly you prepared weekly payrolls, that were submitted to Basich Brothers after you started your operation, is that correct? A. That is correct.

Q. And that was the reason, was it not, why you incorporated in your contract subdivision 3, of Article XIV, which provided that Duque and Frazzini to submit weekly payrolls by Monday night of each week, which is closed on Saturday at midnight, to Basich Brothers Construction Company. Basich Brothers Construction Company to pay labor compensation insurance public liability property damage and various insurances, employment, federal old age assistance on employees and other insurance on labor and charge same to Duque and Fraz-

Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

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Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

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Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

zini, which amounts are to be deducted from the amount earned. That is the reason that that paragraph was put in this contract, isn't it so?

A. That is so.

Mr. McCall: Just a second, I did not get the question before that.

(Question read by reporter.)

Mr. Monteleone: With reference to May 19, 1945, when you stated that you suspended your operations in order to develop new material. How long previous to that time was it that you had located this particular property?

A. We had never particularly located the spot. We were on a prospecting tour that day with this machine, trying to locate a suitable bank of material.

Q. When did you first, with reference to May 19, 1945, discover this particular portion that you say you were going to remove the material that you stated Basichs were removing from the same pit.

A. We did not discover it previously. As a matter of fact we were exploring and stumbled on to that spot because it looked good.

Q. When did you stumble onto that, with reference to May 19, 1945?

A. It was either May 19 or the next day.

Q. And did you discuss that matter with Mr. Woolums the engineer, when you discovered that spot?

A. Mr. Woolums and Mr. Kovick came out.

Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

Q. Now, I'm asking you the questions. Just answer any way, Mr. Frazzini. Did you discuss that spot that you located with Mr. Woolums, the United States Engineer?

A. Am I confined to "yes" and "no?"

Q. Yes, I want to know. A. Yes.

Q. And when did you discuss the matter with Mr. Woolums with reference to May 19, 1945?

A. It was either on May 19th or 20th.

Q. The 20th was on a Sunday, was it not?

A. Yes.

Q. Was Mr. Woolums there this Sunday?

A. I can't say for sure. He was there one of those two days.

Q. Did you see Mr. Woolums on the job on the 19th when you returned from Tucson after you received this telephone call from Mr. Kovick?

A. It was either on the 19th or 20th.

Q. All right. And did you point out to Mr. Woolums this particular spot where you intended to remove the material?

A. He came right to it.

Q. What was that?

A. He came right to the spot?

Q. And what discussion did you have with Mr. Woolums on the 19th of May after you returned to the job with reference to the material?

A. I'm taking it that it was the 19th of May—Mr. Duque conducted most of the conversation in my

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

presence and we discussed digging there with Mr. Woolums and Mr. Kovick both.

Q. What did Mr. Woolums say?

A. Mr. Woolums or Mr. Kovick, I cannot say for sure, told us that we would not be allowed to dig there. I believe they said it was because it would disfigure the man's ranch too much.

Q. Did you talk—do you know Golab, the man who owns the ranch?      A. Yes, I did.

Q. Did you speak to him about it afterwards?

A. Not afterwards, but he was there at that time.

Q. Mr. Golab was there?      A. Yes.

Q. Did he object to it?

A. I can't remember if he did or not.

Q. Was that the only reason that was given to you why the material should not be removed from that particular location that you indicated to Mr. Woolums and Mr. Kovick on this particular day?

A. As I remember it, that was the only reason.

Q. I see. Now, after you moved off of this job, you never returned back to Arizona, did you?

A. No, I didn't.

Q. All right. Now, you stated that Kovick was doing work around a pit, as a matter of fact he was superintending the batching plant of Basich Brothers on that location, wasn't he?

A. No, I think he spent very little time around there as he had a very competent man in charge there.

Q. How do you know he didn't?

(Plaintiff's Exhibit No. 24—(Continued)  
(Deposition of Carson Frazzini.)

A. Because it was alongside the location I was working on and I could look up any number of times a day and determine whether Mr. Kovick was present by the fact that his car was or was not there.

Q. You kept a lookout for Mr. Kovick all the time?      A. Not necessarily.

Q. You knew he spent a great deal of time on the Davis-Monthaine Air Field, didn't you?

A. Early on the job he spent a great deal more time at the pit because very little work was in progress at the Field.

Q. And he was checking the trucks of Basich Brothers which drove into the place where you were operating and removing materials, isn't that true?

Mr. McCall: I object to that as having been asked and answered.

Witness Frazzini: I have never seen Mr. Kovick check them.

Q. Now, when the materials were dumped into Basich Brothers trucks from your bins, was there a record given as to the quantity of material in the truck?      A. There was not.

Q. Were you ever informed of that?

A. No, we were not.

Q. And did Basich Brothers have a man there to keep check of the quantity of material that was being dumped into their trucks from your bin?

A. In the early part of the job I do not believe they did, but after the operation had been going for some time they posted a man up on the bank

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

who checked the trucks from one position in all pits that were hauling into the Field.

Q. Now, all of your payrolls were signed by the employees, were they not?

A. Are you referring to the payroll cards?

Q. Yes.

A. Yes, no cards would be on order without a signature.

Q. And then they were checked over by you and Mr. Duque or you or Mr. Duque? Is that right?

A. Yes.

Q. Who is Jack Brown?

A. Jack Brown was a man brought by us from the Blythe job into Arizona who worked for us on previous jobs as a mechanic and who worked for us after we arrived in the Arizona area as a mechanic and a gravel plant operator, and those are the only capacities that I remember of his working him.

Q. And he prepared his payroll card also, did he not?      A. I believe so.

Q. As far as you know his entries were correctly made?      A. I think so.

Q. And that work was necessary in connection with your operation, isn't that true?

A. It was.

Q. Did you ever request of Basich Brothers that they give you a bill of particulars of accounting at any time?      A. Not to my knowledge.

(Plaintiff's Exhibit No. 24—(Continued)

(Deposition of Carson Frazzini.)

Q. Now, you stated that Basich Brothers never requested of you permission to move in the P.D.O.C. plant, is that true? A. For themselves?

Q. Yes. A. They did not.

Q. You duly received a letter from Basich Brothers, dated April 27, 1945, which has been introduced in evidence, which was sent to both you and the Glens Falls Indemnity Company, which states as follows:

(The above letter was read by Mr. Monteleone, copy of which was not available to Reporter for verification.)

Q. Do you remember receiving that letter?

A. I don't remember but it's quite possible—I believe I did receive it.

Q. Did you ever install any additional equipment after you received this letter, aside from what you then had?

A. What was the date of that letter?

Q. February 27, 1945. A. February?

Q. April. April 27, 1945.

A. Yes, we did.

Q. You made a request—you say you did install additional equipment?

A. I won't say install but let's see--no, I take that back, I don't believe we did.

Q. Did Mr. Bray, of Glens Falls Indemnity Company or anyone connected with Glens Falls Indemnity Company, ever state to you that the Glens Falls Indemnity Company were desirous of installing ad-

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

ditional equipment to meet the required production?

Mr. McCall: To which we object as irrelevant, incompetent, and immaterial. The Glens Falls was not a party to the contract.

Mr. Monteleone: Did Mr. Bray, at any time, ever state to you that the Glens Falls Indemnity Company would desire to install certain equipment in order to meet the required production?

Witness Frazzini: He never used the word "desire." In fact, while we discussed installing equipment with him he never gave us any decision or instructions or anything like that.

Q. Did anyone else that you know of connected with the Glens Falls Indemnity Company at any time following this letter of April 27, 1945, indicate to you any desire on the part of the Glens Falls Indemnity Company to install on their part any additional equipment in connection with your operation?

A. Well, by desire, I could only say this. They would either direct me or not direct me.

Q. And did Mr. Bray offer any plan to install additional equipment—did you ever discuss with Mr. Bray the installation of additional equipment?

A. Yes, several times.

Q. In connection with what matter?

A. I don't remember specifically but after his first trip to Tucson, I would discuss anything with him that would come to my mind, and I had possibly, as I would remember the major conversations

(Plaintiff's Exhibit No. 24—(Continued))

(Deposition of Carson Frazzini.)

with Mr. Bray, and one of the things that I had discussed with him was whether it would be possible and that was the main interest in several conversations, whether it would be possible for us to obtain additional aid from Glens Falls to continue our project.

Mr. Monteleone: That is all.

Mr. McCall: I have nothing further.

(The Hearing on the above Deposition adjourned at 6:10 p.m.)

I, Carson Frazzini, have read the foregoing Deposition of testimony given by me in the proceedings had in the above entitled case, and the same is a full, true and correct transcription of the statements made by me in said cause.

/s/ CARSON FRAZZINI.



State of Nevada,  
County of Washoe—ss.

I, Jeanne Brannin, a Notary Public in and for the City of Reno, County of Washoe, State of Nevada, duly appointed to administer oaths, et cetera, do hereby certify:

That the defendant, Carson Frazzini, a witness in his own behalf in the Deposition named, was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that I, a disinterested person herein, did take the said Deposition down in Stenotypy and that said Deposition was carefully read over by the witness, Carson Frazzini, and corrected by him in such particulars as he desired, and after being so read and corrected, said Deposition was subscribed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 31st day of January, 1947.

[Seal]      /s/ JEANNE BRANNIN,  
Notary Public.

My Commission Expires September 30, 1950.

[Endorsed]: Filed U.S.C.C.A. June 18, 1947.

## DEFENDANT'S EXHIBIT A

[Letterhead Basich Brothers Construction Co.]

P. O. Box 5416, Tucson, Arizona, May 3, 1945.

Duque & Frazzini

P. O. Box 5416

Tucson, Arizona

Gentlemen:

In answer to your letter of May 1, 1945, we have carried your request to the Resident Engineer and have obtained permission to make the substitution on the following basis.

Change from 3" Maximum combined aggregate gradation to the 1½" gradation will be applicable to all concrete poured in Area M involving approximately 4,270 cubic yards.

Substitution of the 1½" gradation will involve no change in our agreement with you nor will there be any adjustment or changes of the bid unit prices stated therein relative to concrete aggregate.

Yours very truly,

BASICH BROTHERS  
CONSTRUCTION CO.

By /s/ G. W. KOVICK,  
Supt.

GWK/bb

Accepted by

DUQUE & FRAZZINI.

By /s/ H. DUQUE.

[Endorsed]: U.S.D.C. Received in evidence, Oct. 14, 1946.

DEFENDANT'S EXHIBIT B

[Letterhead Basich Brothers Construction Co.]

Tucson, Arizona, P. O. Box 5416, May 1, 1945.

Confirmation of Verbal Agreement between Mr. N.  
L. Basich and Duque & Frazzini.

Duque & Frazzini

P. O. Box 5416

Tucson, Arizona

Gentlemen:

Our agreement for Rental of Pioneer Crusher will be based on ten cents (\$0.10) per cubic yard for all materials processed thru the plant.

You are to furnish all labor, insurance, fuel, lubricants, repairs, screens, belting and build up the rolls and jaws at no cost to us.

This figure will not include rental of 2 additional bunkers, 1 feeder conveyor to Scalping Plant, 1 Discharge Conveyor on waste and three symons screens.

Rental for power unit to supply drive for symons screens will be charged to your account.

Very truly yours,

BASICH BROTHERS  
CONSTRUCTION CO.

By /s/ G. W. KOVICK,

Supt.

Inst./NLB

Accepted by:

DUQUE & FRAZZINI.

By /s/ H. DUQUE.

[Endorsed]: U.S.D.C. Received in evidence, Oct.  
14, 1946.



DEFENDANTS' EXHIBIT C

Recapitulation of Production Items Mentioned in Article XXIII of the Sub-Contract, Dated February 7, 1945, between Basieh Brothers Construction Company and Duque & Frazzini Taken From the Signed U. S. Engineers' Estimates to Basieh Brothers Construction Company on the Original Contract #W-04-353-Eng.-1302, dated January 25, 1945.

	Item No. 15 Gravel for Base Court		Item No. 11 Stabilized Subgrade Under Gravel Base Course		Item No. 9 Gravel Embankment		Items Nos. 21 & 22 18"-12"-18" Portland Cement Concrete Aggregate and 10" Concrete Airfield Pavement		Items Nos. 26A & 26B Binder Course Asphaltic Concrete Class (1) Wearing Course, Class (2)		Item No. 47 Concrete Aggregate for Structures		Item No. 28 Cover Aggregate for Seal Coat		
	Estimate Number	Unit Cu. Yds.	Price \$1.50	Unit Sq. Yds.	Price \$.03	Unit Cu. Yd.	Price \$1.40	Unit Cu. Yd.	Price \$7.10	Unit Tons	Price Class (1) \$3.60 Class (2) \$3.70	Unit Cu. Yd.	Price \$50.00	Unit Tons	Price \$3.50
January 25 to February 28, 1945.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
March 1 to March 15, 1945.....	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
March 16 to March 31, 1945.....	3	6,307	\$9,460.50	34,700	\$1,041.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
April 1 to April 15, 1945.....	4	11,662	17,493.00	15,840	475.20	500	\$ 700.00	2,630	\$18,673.00	.....	.....	.....	.....	.....	.....
April 16 to April 30, 1945.....	5	3,595	5,392.50	9,561	286.83	500	700.00	8,150	57,865.00	.....	.....	.....	.....	.....	.....
May 1 to May 15, 1945.....	6	11,140	16,710.00	33,256	997.68	2,500	2,800.00	2,600	18,460.00	2,023.6	\$ 7,284.95	20	\$1,000.00	.....	.....
										2,703.4	10,002.58				
May 16 to May 31, 1945.....	7	5,703	8,554.50	20,448	613.44	.....	.....	8,355.21	59,321.99	.....	.....	95	4,750.00	.....	.....
June 1 to June 15, 1945.....	8	1,000	1,500.00	53,784	1,613.52	.....	.....	9,729.79	69,081.51	.....	.....	.....	.....	.....	.....
June 15 to June 30, 1945.....	9	2,986	4,479.00	-19,881	-596.43	1,900	2,660.00	5,115	36,316.50	.....	.....	8.5	425.00	.....	.....
July 1 to July 15, 1945.....	10	774	1,161.00	.....	.....	.....	.....	3,353	23,806.30	3,551.4	12,785.04	74.5	3,725.00	.....	.....
Slight Modification of Ser. 305—These Items not Listed.....	11	.....	.....	.....	.....	.....	.....	.....	.....	2,179.6	8,064.52	.....	.....	.....	.....
July 16 to July 31, 1945.....	12	.....	.....	.....	.....	.....	.....	4,828	34,278.80	716	2,577.60	34	1,700.00	.....	.....
July 15 to July 31, 1945—Extension of Taxiway 7 and Parking Apron.....	13	7,500	11,250.00	32,751	982.53	.....	.....	10,015.20	71,107.92	5,824	21,548.80	6	300.00	.....	.....
August 1 to August 15, 1945.....	14	.....	.....	.....	.....	595	833.00	2,255	16,010.50	2,042	7,351.20	88	4,400.00	.....	.....
										227	839.90				
August 16 to August 31, 1945.....	15	3,046	4,569.00	3,792	113.76	3,566	4,992.40	2,949	20,937.90	.....	.....	20	1,000.00	.....	.....
August 1 to August 10, Extension.....	16	75	112.50	.....	.....	.....	.....	1,102.15	7,825.27	.....	.....	.....	.....	.....	.....
September 1 to October 8, 1945.....	17	976	1,461.00	2,602	78.06	1,190	1,678.60	6,261	44,453.10	2,262.84	8,146.22	40	2,000.00	.....	.....
										2,970.32	10,990.18				
		54,764	\$82,146.00	186,853	\$5,605.59	10,260	\$14,364.00	67,343.35	\$478,137.79	24,500.16	\$89,591.00	386.00	\$19,300.00	751 Tons	\$2,628.50
		Cu. Yds.		Sq. Yds.		Cu. Yds.		Cu. Yds.		Tons		Cu. Yds.			

Original Total Estimates per October 8, 1945, Estimate	47,189	\$70,783.50	154,102	\$4,623.06	10,260	\$14,364.00	56,226.00	\$399,204.60	24,500.16	\$89,591.00	380.00	\$19,000.00	751 Tons	\$2,628.50
	Cu. Yds.		Sq. Yds.		Cu. Yds.		Cu. Yds.		Tons		Cu. Yds.			

Total Original Estimates To Be Paid to Basieh Brothers Construction Company ..... \$ 942,816.00  
 Quantity Increases During the Period of This Job—Not Explained in Detail by Item Number..... 40,911.05  
 Plus: Modification Increases During the Period of This Job—Not Explained in Detail by Item Number..... 40,862.23

Total Amount Received by Basieh Brothers Construction Company on This Job—Per the Above U. S. Engineers' Estimates ..... \$1,024,589.28

The Unit Prices and Dollar Amounts Shown Above Are the Prices and Amounts Paid to Basieh Brothers Construction Company.  
 These Estimates Bore the Signatures of B. C. Woolams or C. M. Brady as Resident Engineer, and R. A. Floyd, Captain, Corps of Engineers, Executive Assistant



## DENFENDANTS' EXHIBIT D

Schedule of Payments Made by Basich Brothers Construction Company on Behalf of Duque & Frazzini February 11 to March 7, 1945

## Bill of Particulars Schedules

## Schedule I—Duque &amp; Frazzini Payroll

	Date of Checks	Amount
Feb. 11 to Feb. 17	Feb. 20, 1945	\$ 565.14
Feb. 18	Feb. 27, 1945	244.57
Feb. 19	Feb. 27, 1945	226.98
Feb. 20	Feb. 27, 1945	203.75
Feb. 21 to Feb. 24	Feb. 27, 1945	1,051.85
Feb. 25 to March 3	March 6, 1945	1,770.87

## Schedule XVII—Parts

Abbey Scherer Co.	March 7, 1945	80.49
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## Schedule XXX—Miscellaneous

Move and Set up Pioneer	March 6, 1945	75.29
Total .....		<hr/> \$4,218.94

[Endorsed]: U.S.D.C. Received in evidence Oct. 14, 1946.

[Endorsed]: No. 11658. United States Circuit Court of Appeals for the Ninth Circuit. Glens Falls Indemnity Company, a Corporation, Appellant, vs. Basich Brothers Construction Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 17, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11658

GLENS FALLS INDEMNITY COMPANY, a  
Corporation,

Appellant,

vs.

BASICH BROTHERS CONSTRUCTION COM-  
PANY, a Corporation,

Appellee.

STATEMENT OF POINTS ON WHICH AP-  
PELLANT INTENDS TO RELY ON AP-  
PEAL

To Paul P. O'Brien, Esq., Clerk of Said Court, to  
the Appellee Above Named, and to Stephen  
Monteleone, Esq., and Tracy Priest, Esq., Its  
Attorneys:



For its Statement of Points on Which Appellant Intends to Rely on Appeal, the appellant hereby adopts the Statement of Points on Which Appellant Intends to Rely heretofore filed with the Clerk of the District Court of the United States, Southern District of California, Central Division (original certified record on appeal pages 502 to 507, inclusive).

/s/ JOHN E. McCALL,  
Attorney for Appellant.

Service of a copy of the foregoing Statement of Points on Which Appellant Intends to Rely on Appeal acknowledged this 11th day of June, 1947.

/s/ STEPHEN MONTELEONE,  
Attorney for Appellee.

[Endorsed]: Filed July 17, 1947.

